

Annual report of the American Bar Association

American Bar
Association

REPORT

OF THE

FIFTH ANNUAL MEETING

OF THE

AMERICAN BAR ASSOCIATION,

HELD AT

SARATOGA SPRINGS, NEW YORK,

August 8th, 9th, 10th, and 11th, 1882.

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PROCEEDINGS OF THE FIFTH ANNUAL MEETING
OF THE
AMERICAN BAR ASSOCIATION,
HELD IN
PUTNAM HALL, SARATOGA SPRINGS, N. Y.,
August 8th, 9th, 10th, and 11th, 1882.

L. P. POLAND, of Vermont, Chairman of the Executive Committee, called the meeting to order at a quarter of nine o'clock on Tuesday evening, August 8th. Mr. Poland said:

Since our last meeting, the President of this Association, Mr. Clarkson N. Potter, has died—a great loss to us as a body, and a loss to the country at large. In this condition of affairs the Executive Committee deemed it proper to invite the Vice-President of the Association for the state of New York to officiate, during the sessions of our Fifth Annual Meeting, as President of the Association, and I take pleasure in introducing that gentleman to you—Francis Kernan, of New York.

Mr. Kernan said:

GENTLEMEN OF THE BAR ASSOCIATION:—I could not properly decline the invitation of your committee to act as your President at this meeting, although I did then, and do now, deeply deplore the sorrowful cause which made it necessary to

invite any one to act as President in place of our lamented presiding officer, Mr. Potter. He was an able and accomplished lawyer, an honorable and high-toned gentleman. He served his state in the Congress of the United States with usefulness and distinction. We in this state of New York feel that his death is a great loss to us, as a citizen and as a member of this Association. It has been deemed fit and proper, before entering upon the orderly proceedings of our Association, that there should be some mark of our respect for the memory of our deceased brother, and our sorrow for his loss. I therefore ask your attention to the delivery of an address prepared by Mr. Everett P. Wheeler, of New York, who will speak to us of our lamented President and friend.

Mr. Wheeler then read his address. (*See Appendix.*)

The President's Address was then delivered by Francis Kernan. (*See Appendix.*)

On motion of Simeon E. Baldwin, of Connecticut, the meeting then adjourned until Wednesday morning at 10 o'clock.

Wednesday Morning, August 9.

The meeting was called to order at 10 o'clock.

The President announced the appointment of the Committee on Publications as follows:

A. Q. Keasbey, Newark, N. J.; Charles S. Bradley, Providence, R. I.; Francis Rawle, Philadelphia, Pa.; Isaac D. Jones, Baltimore, Md.; W. P. Wells, Detroit, Mich.

Alexander R. Lawton, of Georgia, then delivered the Annual Address. (*See Appendix.*)

A vote of thanks to Mr. Lawton for his address was then passed.

Luke P. Poland, on behalf of the General Council, stated that they were not prepared to offer the list of new members, but would do so at the evening session.

The meeting then proceeded to elect the General Council, and the following named gentlemen were elected for their respective states :

Alabama, David Clopton, Montgomery.

Arkansas, M. M. Cohn, Little Rock.

At this stage of the proceedings Mr. Poland, on behalf of the General Council, presented a list of names of new members, all of whom were elected.

(See List of New Members at the end of the Minutes.)

On motion of W. H. H. Russell, of Missouri, the election of the General Council was deferred until Thursday morning, in order to enable the members from different states to confer with each other.

John W. Stevenson, of Kentucky, offered the following resolution, to be laid on the table until it should be reached in the regular order of business :

Resolved, That the next meeting of the American Bar Association be held on the 8th of August, 1883, and the days following, at the Green Brier, White Sulphur Springs, Green Brier County, West Virginia.

The resolution was seconded by Charles A. Peabody, of New York, and ordered to lie on the table.

T. N. Waul, of Texas, and C. C. Bonney, of Illinois, called the attention of the Association to the presence of delegates from the Bar Association of those states respectively, and moved that such delegates be invited to take seats with the members of the Association.

Henry Hitchcock, of Missouri, suggested that provision was made for such delegates as might be present in the fourth by-law of the Association, which he asked might be read by the Secretary.

The Secretary read the fourth by-law, and stated that the credentials and names of the delegates present had been handed to him, and would be referred to in his report.

The Secretary then made his report as follows:

The Secretary's Report.

MR. PRESIDENT:—I have usually made a very brief and oral report, and will adopt the same course this time. A few statistics of our Association in its early youth may be interesting. The number of members contained in the printed report for 1878 was 289, and the Treasurer's Report for the first year showed there had been \$1,065 collected for dues. In 1879 there were 524 members, and \$1,575 collected; in 1880, 552 members, and \$2,065; in 1881, 556 members, and \$2,465 collected, thus showing a gradual increase in membership and a decided increase in the financial part of our work.

Last year 142 members were elected. There are yet three states unrepresented in this body—Oregon, Nevada, and Colorado; thirty-five are represented, and the District of Columbia, making thirty-six.

I have received credentials of the following delegates:

Texas, Jacob Waelder.

Maryland, John H. B. Latrobe.

Michigan (where there appear to be two local Bar Associations), Mitchell J. Smiley, of Grand Rapids; John W. Champlin, of Grand Rapids; Theodore Romeyn, of Detroit.

Kentucky, William Preston, John W. Stevenson, and B. F. Buckner.

Tennessee, John L. T. Sneed and L. B. McFarland.

Illinois, E. B. Sherman and Charles Dunham.

On page 47 of the record of our last meeting will be found a resolution offered by Mr. Stockbridge. A report upon the

subject therein referred to may be expected from the Committee on Jurisprudence and Law Reform.

On page 84 is a resolution of Mr. Hitchcock, which was made the subject of investigation by a special committee of nine. That committee have made two reports, a majority and minority. I have printed copies of those reports for members who desire them.

Thursday evening was assigned for a paper by J. B. Henderson of Missouri, but he has not prepared it, and that evening will be specially devoted to the consideration and discussion of the two reports to which I have just referred.

There is also a resolution on page 85 upon the subject of Bankruptcy Law, which went over to this session. A resolution of Richard Vaux, of Pennsylvania, on the subject of a Committee on Constitutional Law was also tabled at last session.

Treasurer's Report.

Walter George Smith, of Philadelphia, said that on behalf of Mr. Rawle, the Treasurer, who was unavoidably detained at home, he submitted his report; and that the vouchers and accounts had been examined and audited by the proper committee and found to be correct.

(See Report at the end of the Minutes.)

The report was accepted.

Skipwith Wilmer, of Maryland, moved to reconsider the vote postponing the election of the General Council to Thursday morning. He said it was important that the General Council be elected without delay, as it was their duty to report the list of nominations for officers, and such report must be made and acted upon on Thursday morning.

This motion was seconded by John W. Stevenson, of Kentucky, and adopted.

Mr. Wilmer then moved to proceed with the election of General Council.

Seconded by W. H. H. Russell, of Missouri.

Henry Hitchcock, of Missouri, proposed an amendment to the last motion, that those states which are passed at this time be requested to make their nominations for General Council at this (Wednesday) evening session.

Amendment accepted, and motion adopted.

The President said: I believe we called two or three states; I will continue them in their order.

The states having been called, the General Council was elected.

(See List of Officers at the end of the Minutes.)

Upon the conclusion of the election of the General Council, the Association adjourned until 7.30 P. M.

Wednesday Evening, August 9, 1882.

The President called the meeting to order at 8 o'clock.

The Chairman of the General Council, Mr. Poland, reported a list of names for membership, all of whom were elected.

(See List of New Members at the end of Minutes.)

Edward Otis Hinkley, of Maryland, Secretary, then read a paper by Gustave Koerner, of Illinois, on "The Doctrine of Punitive Damages, and its Effects on the Ethics of the Profession." *(See Appendix.)*

Upon concluding the reading, Mr. Hinkley stated that the Executive Committee had passed a rule that no papers should in future be read by the Secretary, and that gentlemen who might be invited to prepare papers would be expected to be present and read their own papers.

U. M. Rose, of Arkansas, then read a paper on "The Titles of Statutes." *(See Appendix.)*

The meeting then adjourned until 10 A. M. on Thursday.

Thursday Morning, August 10.

The meeting was called to order at 10 o'clock, by the President.

Luke P. Poland, on behalf of the Executive Committee, recommended an amendment to By-Law VI.: "No Complimentary resolution to an officer or member, for any service performed, paper read, or address delivered, shall be considered by the Association."

The above amendment was adopted by a unanimous vote.

The President then introduced Thomas J. Semmes, of Louisiana, who read a paper entitled "The Civil Law as Transplanted in Louisiana." (*See Appendix.*)

The Chair announced the reports of standing committees to be in order, and called upon those committees in their respective order.

William Allen Butler, Chairman of the Committee on Jurisprudence and Law Reform, presented the report of that committee, which he read to the meeting. (*See Appendix.*)

E. B. Sherman, of Illinois:

I beg to correct an inadvertent error into which the committee has fallen regarding the laws of Illinois on divorce. It is true that formerly the statutes of Illinois did provide in substance that divorces might be granted for causes satisfactory to the court, but this was judiciously repealed more than twenty years since by a decision of the Supreme Court, which held that such satisfactory cause must be one of the specific causes prescribed by the statute. Moreover, this statute was repealed about ten years ago.

A large part of the fraudulent divorces obtained in this country are procured in the territorial courts of Utah. The lawyers of New York, Chicago, and other cities send the causes of their clients to these courts, which grant divorces without proper jurisdiction, either of the persons or subject-

matter. These divorces have been set aside as absolutely fraudulent by every court of last resort called upon to pass upon them. If the committee can suggest any remedy for this disgraceful abuse of judicial functions, I suggest that they have leave to add the same to their able and exhaustive paper.

Mr. Butler thanked the gentleman from Illinois, and intimated that the report should be corrected in the particular referred to.

On behalf of the Committee on Judicial Administration and Remedial Procedure, Alexander R. Lawton, of Georgia, said:

Mr. President,—I do not know that any other member of that committee is present but myself. I expected Mr. Rufus King, our Chairman, would be here, but I have received a communication from him, that it is impossible for him to be present. He has, however, forwarded to me a report. I have not had time to examine it, and it has been changed somewhat since I last saw it. I am prepared to say, however, that I would adopt every feature of the report, and of course Mr. King does so, as he prepared it. I will present the report to the Association to take such action upon as they deem proper. (*See Appendix.*)

E. F. Bullard, of New York, moved that the report be accepted and printed, without taking further action upon it at the present meeting.

B. F. Buckner, of Kentucky, proposed an amendment: That the report, after it is printed and incorporated into the proceedings, be left with the same committee.

This amendment was accepted by Mr. Bullard, and the motion so amended was adopted.

L. P. Poland called attention to the printed resolutions accompanying the report of the Committee on Jurispru-

dence and Law Reform, and moved their adoption jointly as printed.

Seconded by W. H. H. Russell, of Missouri.

Henry Hitchcock, of Missouri, called for a division of the resolutions.

The Chair then put the questions to the meeting upon the adoption of the resolutions, taking each one separately, and all were respectively adopted.

Edmund H. Bennett, of Massachusetts, suggested the absence of Mr. Carleton Hunt, of Louisiana, Chairman of the Committee on Legal Education and Admission to the Bar, and stated that no report would be made.

Thomas J. Semmes, Chairman of the Committee on Commercial Law, announced that no report would be presented. He said some action should be taken upon the matter of a National Bankruptcy Law. The matter was discussed at the last Annual Meeting. He would examine the records, find what disposition was made of it, and bring the matter up at a later stage in the proceedings. In his opinion a special committee should be appointed to take that subject in charge.

The committees on International Law, on Grievances, and on Publications had no reports to make.

The Chair announced that he understood the Committee on Obituaries had a report, which would be printed in due course.

The nomination and election of officers being next in the regular order of business, L. P. Poland, of Vermont, said:

The General Council have prepared a list of nominations, pursuant to their duty under the Constitution in that respect, and I will ask the Secretary of the Council to read the report.

William A. Davidson, of Ohio, then presented the following list of nominations, the gentlemen named therein being all unanimously elected to the respective offices.

(*See List of Officers.*)

Edward J. Phelps, of Vermont, Chairman of the special committee upon the matter of the "Delays Incident to the Business of the United States Supreme Court," formally presented to the Association two reports—a majority and a minority—and moved that their consideration be made the subject of a special order for Thursday evening.

This motion, seconded by Henry Hitchcock, of Missouri, was adopted.

W. H. H. Russell, of Missouri, offered the following resolution, which was unanimously adopted :

Resolved, That the Secretary notify in writing, within sixty days, the Vice-Presidents and members of the General and Local Councils who are not present at this session, of their election, and that in the event of their non-acceptance, the Executive Committee be authorized to fill all vacancies.

William Allen Butler, of New York, offered a resolution which, when subsequently amended, read as follows :

Resolved, That the Executive Committee be requested to inquire into and consider the advisability of adopting a plan of fixing the membership of the Association on such basis as will, in their judgment, best insure the greatest efficiency of the Association, and to report the same, with any suggestions as to the method of proposing and electing members which may seem to them advisable.

Seconded by C. C. Bonney, of Illinois.

Edward O. Hinkley, of Maryland, said :

I should like to offer a few remarks upon this matter. I happen to know a little more than other gentlemen upon this matter of membership. I think we have elected twice as many members of this body as remain now upon the roll. Last year we had 142 new members, and I feel sure not more than one-third will run through this year. I think this is due to the practice of proposing members before they have been spoken to about the matter and their wishes in

regard to it ascertained. It is far better that gentlemen should first see their friends whose names they desire to present for election to membership in this body. A gentleman said to me this morning, "My state is represented by a few members only. I could give you the names of from ten to twenty, but upon second thought I have decided to find out, when I go home, if they want to become members, and propose the names of those who do." I told him I thought that would be the better course.

As to this question of limiting the number, by way of showing what might be done, suppose this body should limit the number of its members to one thousand, and suppose we should ordinarily expect an attendance of about one-tenth of them, perhaps one hundred would be enough to transact the business.

Unless some limit is fixed we shall be put to many inconveniences. The hall must be larger; the preparations for members in various ways must be larger. I do not know how many we can conveniently seat at dinner. One hundred is a good round number, and ordinarily sufficient for social purposes. I suppose the inconvenience arises from the admittance of the younger members of the bar into such bodies perhaps a little too soon. Our present rule is that they must have been five years at the bar. If we find we are increasing too rapidly, we might raise the time to seven years—or more, if necessary.

Putting it upon the basis of representation, suppose we take in round numbers 350 to be the whole number of the members of Congress, taking both houses, and suppose we multiply that by three—1,050 members. Something like that might be resorted to to make a rule limiting the number of members in this body.

The rule in our by-laws providing for a representation here from local Bar Associations admits about fifty or sixty,

if all the states are represented, which would increase the whole number of members by so many.

This is a subject requiring our almost immediate and earnest attention. The matter has been brought to my notice by several members, and one gentleman, who just bade me good-bye, said he felt a great interest in it. I told him at our next meeting undoubtedly the matter would be brought up, as I saw there was such a feeling prevailing. I am glad one of the gentlemen of the Executive Committee has brought the matter up. I have had no consultation with him, but I heartily concur in his views, that the subject is one very proper to be considered.

Bedford M. Estes, of Tennessee, said:

I think a matter of this importance ought not to be acted upon without consideration. It should be postponed, and made the special order for to-morrow, in order that we may consider it before we take action upon it. To be sure, if it were referred to a committee, it might not bind the members of the Association, but it would be an entering wedge.

I can see that there ought to be limitations thrown round our membership, but it should be such a plan as would commend itself to members of the bar throughout the country. I do not think a system based upon congressional representation is a good plan.

If this resolution is simply referred to a committee to consider and report upon limitations for membership, without specifying any particular method, I might think more of it; but we cannot act upon it at so short notice as an Association.

The difficulty suggested by our worthy Secretary does not seem at present to be troublesome. This hall is capacious enough for many times our number, and, as far as attendance is now concerned, it would be better to offer some inducement that we might have more.

So far as membership is concerned, we ought to assume that no member will present the name of a gentleman for membership with whom he has not conferred, and who would not be a worthy member to associate with us.

In order to get the sense of the Association upon this subject, I move that the matter be postponed and made the special order for to-morrow morning at the same hour.

Seconded by James M. Dudley, of New York.

William Allen Butler, of New York, said:

I am solely responsible for the resolution offered. I did not speak to any member of the Executive Committee about the matter, but it has occurred to me that we should have some basis, not of exclusion, but of limitation, for the purpose of filling our numbers to a certain point, and keeping them full. I have no objection to so amending my resolution as to comply with the suggestion of the gentleman from Tennessee, Mr. Estes.

The resolution was then amended so as to refer it to the Executive Committee.

Mr. Estes withdrew his motion to postpone the consideration of the matter, and seconded the resolution.

E. F. Bullard, of New York, concurred in the resolution as now offered. He thought it would be well to give the Association the character and dignity of a representative body in some way; that members should be elected in a representative capacity. If the Association could at all times succeed in getting about one hundred to one hundred and fifty or two hundred members to attend the annual sessions, that would be enough to carry on the business properly, while the great usefulness of the work of the Association would be promulgated by the publication of the annual reports.

Mr. Butler's resolution was then adopted.

An adjournment was then taken until 7.30 P. M.

Thursday Evening, August 10.

The Association was called to order at 8 o'clock by the President, who said: The reports of the special committee in reference to the matter of delays in the Supreme Court of the United States, which were laid before the Association this morning, and made the special order for this time, are now before the Association for consideration.

Henry Hitchcock, of Missouri, offered the following resolution:

Resolved, That the conclusions presented in the report of the majority of the Select Committee on the Relief of the United States Courts are approved by this Association, and the said report is hereby adopted.

Seconded by James M. Dudley, of New York.

W. H. H. Russell, of Missouri, said:

I rise to a point of information. I desire to know whether it is the ruling of the Chair that the Chairman of the committee will have the close of this debate, or whether that portion of the committee making the majority report. The precedent established by the rule in Congress is that the Chairman of a committee reporting, no matter whether there is a majority or minority report, has the close of the debate, and I take it, therefore, that Mr. Phelps has the right to close the debate on the subject of the two reports. That is the reason why I rise to ask the information of the Chair.

Henry Hitchcock:

I would state that the motion just presented by myself was done after consultation with Mr. Phelps. I understood it was acceptable to him that the question should be raised in this way. As to any question upon the order of debate

hereafter, it had occurred to me that whenever that question arose it would be competent for the Chair to pass upon it.

The President said :

The question comes up directly on the resolution which has been offered, which is to confirm and adopt the majority report, as I understand it. I suppose it would be orderly and according to precedent that those supporting the affirmative proposition are entitled to have the opening and close.

Henry Hitchcock then opened the debate upon the subject as follows :

MR. PRESIDENT AND GENTLEMEN :—It would have been much more satisfactory to me personally if some other of the distinguished gentlemen with whom I had the pleasure of signing the majority report had been designated by them to make what will be simply a brief opening statement of the reasons which led them to the conclusions stated in that report.

I shall assume that the members of the Association generally have read both the reports. I am fully justified in assuming also that every practising lawyer is familiar with the state of things which has induced the action already taken on this subject by the Association. We all agree that there is an imperative necessity that Congress should in some manner provide an adequate remedy for the delays incident to the final determination of causes in the United States Courts, concerning which this committee was directed to inquire and report. It will also be agreed that the remedy to be provided must be one which shall not only apply to the Supreme Court, but also to the Circuit Courts, suitors in which are suffering not less from delays and impediments than those in the Supreme Court. Any remedy which did not meet the exigencies of both the Supreme and the Circuit Courts of the United States would be totally inadequate.

The problem may be very simply stated: The present appellate and *nisi prius* business cannot be done by the machinery now provided for it. How shall this great evil and injustice be remedied? It is obvious that the remedy must consist, so far as the Supreme Court is concerned, either in diminishing the quantity of appellate business, or increasing the means or machinery provided for transacting it, or both. The question at once arises whether the appellate business might not be sufficiently reduced by again raising the pecuniary limit of appealable cases. The authors of the Judiciary Act of 1789, in fixing \$2,000 as the least amount in controversy authorizing an appeal to the Supreme Court, recognized the fact, or at any rate acted upon the presumption, that causes involving a less amount than that were not likely to be of such general nature, or to involve principles of such importance, that their final determination by the highest Appellate Court would be necessary to do substantial justice. But the steady increase of the number of appeals, and the consequent inability of the Supreme Court to dispose of them without delay, induced Congress some years ago to raise this limit to \$5,000. That method of relief, therefore, has already been resorted to. I think we shall all agree that the present limit is as high as is just or permissible, if it is to be an absolute limit of appeal. Indeed, every one knows that it has been gravely questioned whether the limit should ever have been raised to \$5,000, even for the reasons which induced that step; and I think we shall all agree that any effort to fix a still higher amount as an absolute limit of appeal, applicable to all cases, would meet with the strongest opposition, and be most questionable as a matter both of justice and of expediency. Speaking for myself, I go further, and strongly deprecate any pecuniary limit of appeal, if it is to be fixed as an absolute rule in all cases, without regard to the nature

or importance of the questions involved. Whatever may be the ground upon which an appeal should be allowed or denied, it does not seem to me that the mere amount of money involved is the right one.

In fact, neither of the reports now before the Association proposes to diminish the appellate business of the Supreme Court by increasing the amount now fixed as the absolute pecuniary limit of appeals; but the plan advocated in the majority report does provide both for reducing the amount of appellate business to be done by the Supreme Court, and for increasing the judicial force, in the manner of which I shall presently speak.

It is clear that no plan should or can be adopted which does not fulfill certain obvious conditions, the first of which is that it shall conform to the requirements of the Constitution.

Under the Constitution there is, there can be, only "one Supreme Court." I need not argue that this absolute requirement must be fulfilled both in letter and in spirit by any plan which is to be even favorably considered.

In the next place, we shall all agree that, so far as the relief of the Supreme Court is concerned, no plan or remedy can be acceptable or effective which does not carefully conserve the dignity of that high tribunal, or which tends, or may tend, to lessen the confidence with which its decisions have been received throughout not only this country, but the civilized world, during its illustrious history.

Neither of these propositions will be denied; but it may be well briefly to consider their full scope and meaning.

The mandate of the Constitution that "the judicial power of the United States shall be vested in *one Supreme Court*, and in such inferior courts as the Congress may from time to time ordain and establish," so far from being an arbitrary or unmeaning provision, was conceived in the highest wis-

dom, and rests upon the gravest and broadest reasons. I beg leave, Mr. President, to recall to your mind and to the attention of the Association the comments of Mr. Justice Story upon this important provision. I read from the second volume of Story on the Constitution, at section 1,597 :

“The Constitution has wisely established that there shall be *one Supreme Court*, with a view to uniformity of decision in all cases whatsoever belonging to the judicial department, whether they arise at the common law, or in equity, or within the admiralty and prize jurisdiction; whether they respect the doctrines of mere municipal law, or constitutional law, or the law of nations. It is obvious that if there were independent Supreme Courts of common law, of equity, and of admiralty a diversity of judgment might, and almost necessarily would, spring up, not only as to the limits of the jurisdiction of each tribunal, but as to the fundamental doctrines of municipal, constitutional, and public law. The effect of this diversity would be that a different rule would or might be promulgated on the most interesting subjects by the several tribunals, and thus the citizens be involved in endless doubts, not only as to their private rights, but as to their public duties. The Constitution itself would or might speak a different language, according to the tribunal which was called upon to interpret it, and thus interminable disputes might embarrass the administration of justice throughout the whole country.”

I can add nothing to this lucid and forcible statement of the true meaning of that provision and of the dangers against which it was meant to provide. The safety of the Republic no less than the authority of the Constitution demand that in spirit as well as in the letter it shall be obeyed. It cannot be doubted that the members of the Supreme Court itself, if and whenever the occasion should arise, would jealously scrutinize, in the light of this fundamental requirement, any scheme or plan, however apparently convenient, which might even remotely tend, either

in fact or in the popular estimation, to imperil that unity which is essential alike to the dignity and the usefulness of the court itself.

Finally, no remedy would be adequate or acceptable which did not provide sufficient force for all the appellate work reasonably anticipated as likely to come in the future—certainly for many years to come—before that tribunal.

Now, in respect to this problem, three principal solutions or plans have been proposed :

1. The establishment of an inferior but independent tribunal at Washington City.

This plan is not recommended in either of the reports presented for consideration here, nor, as I think, has it received any general support anywhere. There is, therefore, no need that anything more be said about it here.

2. Another plan, which is that approved in the minority report, may be generally stated thus: That the Supreme Court be divided into subdivisions, sections, or, as they are sometimes called, committees, to whom respectively shall be assigned certain portions of the appellate business, with such limitations and qualifications as set forth in the minority report.

3. The third plan provides for the establishment of intermediate appellate tribunals, between the present Circuit Courts and the Supreme Court. This is the distinguishing feature of the plan supported by the majority report.

I think I am authorized to say for my associates that we have great pleasure in agreeing with certain propositions which we find in the minority report. For example, I read from page 8 of that report the following statement :

“ No one familiar with the character of the causes in that [the Supreme] Court, or who will take the trouble, by examining the reports, to make himself familiar with it, will

fail to perceive that, while many appeals find their way there which involve questions of great importance and serious doubt, a large proportion of the business consists of causes not presenting any special difficulty nor any question either new or important."

We concur in the accuracy of this statement, and find in the fact thus recalled a very important argument in support of the plan advocated in the majority report. We are wholly unable to concur in the conclusion apparently drawn from it by our friends of the minority, to the effect that these causes of minor importance (so far as the legal principles involved are concerned) can properly be relegated to a fraction of the Supreme Court itself.

Again, referring to pages 9 and 10 of their report, not only do we concur in the objection there stated to any unnecessary increase in the number of judges of an appellate tribunal, but especially in the further statement (page 10) that—

"Every enlargement of a court beyond what its necessary duty requires, tends to induce the practice of delegating causes to a lesser number of judges, or even to a single judge, for examination."

The statement just quoted certainly seems to imply a conviction on the part of those who made it—in which we cordially agree—that the practice of delegating causes for consideration in the first instance, and practically for decision, to any less number of judges than those who constitute the whole court, each one of whom is, and ought to be, responsible for its determination, is a most improper practice, not to say a dangerous one. But from this conviction also we deduce conclusions which make it impossible for us to concur with our brethren in advocating any plan for subdividing the Supreme Court, and thus practically committing the decision of causes to a part of the court only.

The plan approved in the majority report is embodied in the bill now pending in Congress, commonly known as the "Davis Bill," and which, after nearly two weeks' consideration and full debate, was passed by that body on the 12th of May last, by a vote of 30 to 18.

The characteristic feature of this bill is that it proposes the establishment of intermediate appellate courts, for which purpose it proposes to increase the number of circuit judges, so as also to afford the relief imperatively needed by the Circuit Courts; and by way of further accommodating the demands of the circuit business, it authorizes both circuit and district judges to hold Circuit Courts. It also increases the number of places at which Circuit Courts may be held.

Those who have read the majority report will remember that we have disclaimed therein not only the desire, but, I may say, in a sense, the right of undertaking to discuss the details of any bill which may be formulated with a view to carry out these purposes. There seems to be an obvious propriety in an Association like this declining to lay stress upon details in any plan which they may see proper to recommend; in other words, declining to undertake the performance of that work which Congress alone can authoritatively perform. The utmost scope of our duty—if it may be called such—will be reached when this Association shall have outlined and approved of some general plan, leaving the details for legislative action.

Consistently with this view the majority report calls attention to the fact that while Judge Davis' bill proposes to create additional circuit judges, a bill drawn by Judges Blatchford and Benedict, of New York, and introduced by Mr. McCook in the House of Representatives, while entirely coinciding with the Davis bill in its general features, nevertheless differs in some details. The bill introduced by Mr. McCook proposes to increase the number of district judges,

and not of circuit judges. It makes specific provision in respect of appeals to the proposed intermediate court in admiralty cases, and there are other differences of detail. The majority report does not enter into a discussion of these features, nor did it seem to its authors expedient that this Association should undertake to pass upon them, for reasons already suggested.

At the same time I have been specially requested to make some explanation in regard to the details of the Davis bill, for the purpose of illustrating what would be the practical operation of the general scheme favored by the majority report. Perhaps the best mode of doing this will be to ask the indulgence of the Association while I read from or summarize some parts of the speech of Judge Davis himself, in the Senate, in advocacy of the bill reported by him from the Judiciary Committee of that body.

As to the composition of the proposed intermediate Courts of Appeal, one of which is established by the bill in each judicial circuit, he says :

“The proposed court will consist of the Associate Justice of the Supreme Court allotted to that Circuit, and three circuit judges thereof, and two of the district judges, the latter to be designated by the order of the court at each term, to serve for the succeeding term. Any four of them, including at least one competent to preside [either the circuit justice or a circuit judge], shall constitute a quorum.”

As to the appellate jurisdiction of the proposed intermediate court, the bill provides in substance that appeals shall lie to that court from the final judgment or decree of any Circuit or District Court within the circuit in the following cases :

1. Whenever an appeal or writ of error now lies from said judgment or decree.

2. Whenever the amount claimed or value of the property in controversy exceeds \$500.

3. Whenever a circuit or district judge shall certify that the action involves a question of general importance.

These provisions obviously authorize appeals from either District or Circuit Courts to the intermediate Court of Appeals, practically without reference to the amount involved, the other conditions being fulfilled.

Further summarizing from Judge Davis' statement, I may say that the bill authorizes an appeal to the new "Court of Appeals" from an interlocutory order of a Circuit or District Court, granting or refusing an injunction, provided such appeal be taken within thirty days, and the case be one in which an appeal would lie to the Court of Appeals from a final decree therein; but such interlocutory appeal does not meanwhile stay proceedings in the cause below.

I quote further from Judge Davis' remarks as follows:

"It will be perceived that the method proposes to allow for a review of the action of the Circuit Courts in civil cases. Under our present legislation, the appeal jurisdiction of the Supreme Court cannot, except in certain classes of cases, be exercised unless the sum or value of \$5,000 is involved. This bill allows to the dissatisfied the freest resort to an appellate court, which, from the mode of its organization, will be peculiarly well adapted for the exercise of the high trust committed to it. Its members will undoubtedly be able and experienced jurists, selected from the circuit, and conversant with the practice which there prevails."

Another and important provision of this bill allows, for the first time since the courts of the United States were established, an appeal from the Circuit Court in criminal cases. At present, as is well known, a criminal case can never go beyond the Circuit Court unless upon a certificate of a division of opinion. This anomaly—and a great anomaly it is, that the liberty and life of the citizen are made to

depend upon the judgment of a court of first instance, when, in respect of his property rights, provided more than \$5,000 is in dispute, he is entitled to an appeal—the new bill proposes to remedy by granting the right of appeal to the new intermediate court in all criminal cases.

In respect of the right of appeal from the proposed intermediate court to the Supreme Court, I quote as follows from Judge Davis' remarks: and I need not ask your careful attention to these provisions, which promise, as we believe, a double advantage: on the one hand, by enabling the Supreme Court hereafter to dispose promptly and satisfactorily of all its appellate business, and, on the other hand, by actually enlarging the right or privilege of appeal to classes of cases in which it is now denied. Judge Davis says:

“Under the provisions of this bill a writ of error or an appeal from every final judgment or decree of the “Court of Appeals,” will, within one year after it has been rendered, lie to the Supreme Court,

1. Where the value or sum of \$10,000, exclusive of costs, is in controversy; *or*,

2. A federal question is involved; *or*,

3. The court certifies that the case involves a legal question of sufficient importance to require the final decision of it by the Supreme Court. In the two last mentioned cases the specific question shall be certified to and finally decided by the Supreme Court.”

A fourth class of appeals is provided for, namely, in patent and copyright cases in equity, without regard to amount; for the bill further provides that a decision of the Court of Appeals upon questions of fact shall be final in all cases, the facts to be specially found if requested by either party, except that in patent and copyright cases in equity a review by the Supreme Court may be had, without regard to the sum or value in dispute, upon questions both of law and fact affecting the validity or infringement of the patent or

copyright; *provided*, that the Court of Appeals shall certify that the question involved is of sufficient importance to render it proper that a final decision thereof should be made by the Supreme Court.

The provision that the decision of the Court of Appeals upon a question of fact shall be final, except as already stated, Judge Davis regards as wise and salutary, and in support of it recalls the facts in reference to comparatively recent legislation concerning the duties of the Supreme Court in admiralty cases, which, by relieving that court from finding the facts, as it formerly did, has greatly assisted the court in disposing of that class of controversies. In this respect the new bill assimilates the duties of the Supreme Court concerning questions of fact in all cases (except as already stated) to the practice already prevailing on writs of error, where the facts have been found by a jury or by the court by consent of the parties. In other words, it proposes to relieve the Supreme Court from perhaps the most perplexing and difficult labor hitherto imposed upon it, namely, the consideration of conflicting evidence and determination of disputed questions of fact, by following in all cases, so far as the Supreme Court is concerned (except as already stated) the practice hitherto pursued in actions at law.

This general scheme admirably meets, as the majority of your committee believe, all the conditions which, as I have ventured to suggest in beginning these remarks, must be met by any plan which shall propose an adequate remedy for the delays in question. It leaves the *one Supreme Court* untouched,—leaves it one body, to sit as one body, every member of which shall be responsible for its decisions, and shall personally take part therein. It provides, in effect, that the Supreme Court and its justices shall not be tempted, much less authorized, to adopt the practice which, as I have

pointed out, seems to be impliedly censured in the minority report, namely, of delegating to a part only of the judges the consideration, and practically the decision, of any cause. This plan therefore obeys strictly the mandate of the Constitution, and its provisions fully meet what Mr. Justice Story says was the distinct and important purpose of the constitutional provision establishing one Supreme Court, namely, uniformity in the decisions of the court of last resort.

We think also that this scheme provides for such uniformity, in another and very important way, far more effectually than the present plan or than any other which has been proposed, because it in fact enlarges the right of appeal now existing, and which is now limited to cases of \$5,000 and upwards, so as to embrace every case really involving legal questions of general importance, even though the amount in controversy therein is the minimum amount for which suit can be brought in a federal court. It thus affords, I repeat, an opportunity of appeal, not now enjoyed, by suitors of every class and degree, provided only it shall appear that the question or questions of law upon which their right depends are questions of such nature or importance that the decision of the particular case would have some bearing upon the uniform administration of justice throughout the country.

I am quite sure that every lawyer who hears me will agree that the true functions of the Supreme Court of the United States is not simply or chiefly to give to any suitor, as such, a right to be heard a second time. That court does not sit to give litigants "another chance." Its great and august function is, above all, the one of which Mr. Justice Story speaks, namely, to secure that uniformity in the final interpretation of the laws daily administered by the inferior courts which is so important and necessary an

element of justice itself. I venture to affirm that, so far as that great need is reached, the highest function of the Supreme Court is fulfilled.

As to the original jurisdiction of the Supreme Court there is of course nothing to be said. That is established by the Constitution, and there is no question of modifying or changing that in any respect.

Another important consideration with reference to the Supreme Court is this, that by preserving its unity, in spirit and in fact as well as nominally, and by enlarging the right of appeal, as the scheme supported by the majority report proposes to do, the most effective provision is made not only for maintaining, but for enhancing, the dignity of that august tribunal, and for increasing the confidence and satisfaction with which suitors throughout the land shall receive its decrees. And any plan which, by reasonable anticipation, should imperil that result, would, for that reason alone, as it seems to us, be a plan which should be condemned.

The scheme advocated by the majority report also affords effective and complete relief to the Circuit Courts. It provides, as its advocates are convinced, judicial force enough to perform promptly and satisfactorily all the work of the Circuit Courts, and also the business likely to come before the new appellate tribunal. The addition of two circuit judges in each of the circuits, it is believed, will accomplish this end. If more should be needed, experience will demonstrate that fact, and will point out to Congress such necessity.

If these considerations are further supported by a reasonable prospect that the plan which we advocate will accomplish the desired result, based upon actual experience of a similar plan which has been experimentally successful in the case of other courts suffering from similar embarrassments, it seems to us that they furnish an unanswerable argument in favor of the general scheme set forth in the "Davis bill," so called.

I have already adverted to the somewhat peculiar position which this Association occupies,—a body without legislative or other authority, in any sense, and whose recommendations must derive all their weight from the character of the men who compose it, and from the reasonable supposition that their declarations are the result of professional experience and skill, and of disinterested and careful consideration of the subject.

It is certainly desirable that the opinion expressed by the members of this Association here present should coincide, as far as possible, with those views, if we can ascertain them, which are held by our fellow-members, in whose name we act and speak. If, then, it should appear that, as the result of a careful and patient consideration of this plan, it has met with general acceptance and approbation,—still more, if it should be true that an experiment of the same general character, tried under circumstances so analogous as to furnish a real and valuable test of its merits, has been found to realize, to the full, the expectations of those who proposed it,—should not these facts have great weight in determining what action we shall take here to-day?

But the fact is well known, Mr. President, that a plan, substantially identical with that supported by the majority report, was several years ago adopted in the state of Illinois for the purpose of relieving the Supreme Court of that State from precisely such embarrassments as we are now considering in respect of the United States Supreme Court. The fact is also well known, not only to the bar in Illinois, but to those of us who have occasion to know from time to time of the working of their judicial system, that this experiment has proved a complete success,—so complete, that those who strongly opposed its adoption are now not only satisfied with it, but advocate its application to the Supreme Court of the United States. I am glad to know that one of our members

from that state, present this evening, who is himself familiar with the workings of this system in Illinois, and who had much to do with its original advocacy and adoption there, will give us the benefit of his observations and experience as a member of the Illinois bar.

Surely, Mr. President, if the question before us is, in fact, a choice between two or more plans, and one of those plans is not only theoretically approved by large numbers of those whose opinions are weighty arguments, but has also been verified, so to speak, by experience such as that just mentioned,—surely these are weighty facts in support of such a scheme. And, conversely, the absence of such experimental verification by any other plan, if not an argument against it, is at least a serious counterweight to any theoretical argument in its favor.

I have thus endeavored, Mr. President, as briefly and clearly as I could, to present the principal considerations of a general nature which have induced a majority of your committee to present the report signed by them. Doubtless in the course of the discussion there will be opportunity to answer questions and meet possible objections which may have presented themselves to the minds of others. Both reports are before the Association, and I presume that all, or nearly all, who hear me have carefully read them both. I have not deemed it necessary, or even appropriate, that at this time I should undertake to anticipate what will doubtless be urged, and urged I am sure with great ability, in behalf of the scheme presented by the minority report, by our friends who have adopted the conclusions which it sets forth.

E. J. Phelps, of Vermont:

It is with extreme regret, Mr. President, that I have found myself constrained to differ in opinion upon this question, with those of my distinguished associates on the committee who have signed the majority report.

I have not failed, on that account, to reconsider carefully the views I had originally formed, and to give attention to the arguments in support of theirs; but the result of all the reflection I have been able to give to the subject, has only confirmed the conclusion before reached, and expressed in the minority report.

If the members of the Association have done me the honor to read the views there set forth, it is unnecessary that I should repeat them; but as we shall all agree, I think, that this subject is one of the most important that can engage our attention, I may be excused for adding some further suggestions.

All parties concur that some action must be taken for the relief of the Supreme Court. That body is at least three years behind with its docket, and the arrears are steadily increasing. Many plans of relief have been suggested, and have engaged the attention of the committee; but they have been all thrown aside, with the exception of the two presented in these reports.

The minority report proposes that the Supreme Court be authorized to divide itself into branches for the hearing of such causes as they may think proper to be heard in that way; reserving to the whole court the duty of hearing constitutional questions, and either upon their own motion or upon previous application of parties, such other causes as they may deem necessary to be so heard, and likewise all causes the argument of which shall have elicited a serious disagreement among the judges. The practical result of such a plan is that all causes involving constitutional questions must be heard, as now, by the whole court; that in respect to all other causes it will be for the court to determine whether they need to be heard by the whole court or may be disposed of by a section of it, with the further right, on the part of a section hearing a case, to order it reheard be-

fore the whole court, if it is found necessary or desirable; and all decisions of a section to be reported to the full court and announced as its judgment, unless a reargument is directed.

It is further recommended, that in constituting these divisions of the court, they should not be made up by a permanent assignment of the judges, but by what may be called an interchangeable division, from time to time, as the court may assign; and that the business shall not be distributed by subjects, but by its order on the docket, so that the jurisdiction of both tribunals should be general.

The plan submitted by the majority of the committee, is to constitute an intermediate appellate court for each circuit, to consist of the judge of the Supreme Court for the circuit in which it sits, of the circuit judges for the same circuit, and two district judges to be designated for the purpose; that court to entertain in the first instance the entire appellate jurisdiction from the Circuit and District Courts, so that all appeals must come in the first instance to that tribunal; then a second appeal to be allowed from them to the Supreme Court in cases exceeding \$10,000 in amount, cases involving constitutional questions, and those which, by the judgment of the intermediate court, shall be certified as of sufficient importance for that purpose.

Since the foundation of our government we have had a system of appellate jurisdiction which until recently has commanded universal approval. We have had all appeals from the Circuit Courts of the United States, heard in the first instance, as well as in the last, by the Supreme Court of the United States at Washington.

Is there any lawyer in America who would to-day propose to change that system, if it were possible for the court to continue to discharge its business? Would any argument of convenience or inconvenience be thought sufficient to

justify such a change? I have never heard such a suggestion; I should never expect to hear it.

It is only necessity which suggests the adoption of some new plan, which must necessarily be only a second best, because we are already in the enjoyment of the best, if it were only practicable to continue it. It is only the existing exigency that would, I believe, induce any lawyer to favor for a moment the proposition to take any part of the appellate jurisdiction of the federal courts away from the Supreme Court of the United States. If that be true—and I venture to say it will not be controverted in this discussion—then, why is not the best and most natural remedy, that which will enable that court to continue to hear all appeals? We all agree they should hear them if possible; and if we can put it in their power to do so by a simple and obvious process, is there any remedy better than that? Is there any other expedient which can be called the “second best”?

The statistics show that if the court should sit in two branches of four and five judges, they could bring up the arrears of their business, and keep it up in the future.

And it does not need to be added, that if the future increase of appellate business in the federal courts should become so large that two branches cannot transact it, by an addition of two or three judges to the present number they would be able to form three tribunals in the same way; so that the plan recommended in our report not only meets the present difficulty, but all the probable or possible exigencies of the future.

A statute of a few lines—without additional expenditure—with no new judges—puts the court in a situation to transact all its business as at present existing.

What is the objection to it? It may be urged by gentlemen that the decision of all the judges in all cases is desirable. I heartily concur in that; but experience shows us that

we cannot have it any longer. What then is the next best recourse? Is it to have the appeals in ordinary cases, not involving novelty or difficulty, heard by a portion of the Supreme Court, with the advantage of a hearing before the whole court whenever found desirable, or is it better to send those appeals off into the circuit, to a tribunal composed of no greater number of judges, to be raised by drafting out of the local forces?

It would be usually impossible to get one of the judges of the Supreme Court to sit in such a Circuit Court, because they are all occupied in Washington from October to May, and the rest of the time is largely the summer vacation. This would leave only the circuit judges, more or less, as they may be created for the purpose, and the district judges designated from time to time to sit with them. Is that the tribunal whose judgment gentlemen would prefer to the decision of one-half of the Supreme Court, sitting in constant consultation with the remainder, still bearing in mind the provision, that upon application of the parties, or upon their own motion, that half may direct any case to be reheard before the whole court? Can better decisions be expected from nine courts, sitting one in each circuit of the United States, far apart from each other, and composed of this miscellaneous and shifting material, better or worse, as it may happen; and then an appeal in certain cases not distinguished for difficulty or importance, but simply by involving over \$10,000; with the possibility of the allowance of an appeal in lesser cases, if the judges of the court can be brought to believe that it is reasonably probable their decision may be wrong? Can there be hesitation among lawyers as to which of these plans affords the prospect of the best administration of justice, and the best system of general law?

It is said there is a constitutional objection to allowing the Supreme Court to sit in branches, inasmuch as the constitu-

tion requires that there should be but one Supreme Court. I have not heard this objection argued; I have not even heard it asserted; it is only suggested; I invite its discussion.

The principle of this provision of the constitution, that there shall be but one Supreme Court, is common to every common law country, and to every state of the Union; it is universal, whether expressed in the terms of a constitution or not, that there shall be but one court of last resort in a common law judiciary.

Our constitution then, in using the phrase, has adopted no new idea, and created no new law.

The constitution declares that "the judicial power of the United States shall be vested in one Supreme Court, and in such inferior courts as the Congress may from time to time ordain and establish." I shall have occasion to quote further from the second section of the same article, on the subject of appellate jurisdiction.

Now, the suggestion is, that unless all the judges of that court, or a majority of them at least, participate in every hearing, it ceases to be "one Supreme Court." Let us see if that is true. What constitutes the quorum of the Supreme Court of the United States? Does any lawyer need to be told that it is the number fixed by Congress? If there were no constitutional provision and no legislation on the subject, it might be said that a majority of the Supreme Court would be necessary to a quorum; but the language of the constitution in the second section of the same article is, "In all the other cases before mentioned" (that is, all the jurisdiction of the court except its original jurisdiction,) "the Supreme Court shall have appellate jurisdiction, both as to law and fact, with such exceptions and under such regulations as the Congress shall make."

That language has received the construction of the Supreme Court of the United States repeatedly, and they have declared

that while this grant of appellate jurisdiction is positive, yet, as it is placed under the regulation of Congress, the action of Congress is necessary, and must be read in connection with the constitution in order to find out whether and how that jurisdiction shall be exercised.

Therefore Congress have prescribed that six judges shall constitute a quorum. Five would be a majority, yet five are not a quorum; and it never has been questioned that it is in the power of Congress to prescribe how many judges shall form a quorum. Then, have they not the same constitutional power to say that four or three shall be a quorum as they have to say that six shall be? Is there any doubt that Congress, having the constitutional power to fix the quorum, may fix it at any number they think proper? *

When Congress shall have declared that four judges shall be a quorum, sitting together to transact appellate business, it is not possible to maintain that there is any constitutional objection to their sitting as such.

Suppose the "Davis bill," so-called, should be passed, and, for the purpose of sending Supreme Court judges into the circuits to hold this appellate court, Congress should enact that four judges of the Supreme Court shall form a quorum for hearings at Washington, and that the other five judges shall go on the circuits to sit in the appellate courts; would any lawyer pretend that there is any constitutional difficulty in the four judges that are left at Washington continuing the business under such an act as that?

If then, these four judges may sit to hear appeals, does it make any difference what the other five are doing at that time—whether they are in their circuits, or whether they are likewise authorized to sit at Washington and hear another class of appeals?

If these considerations dispose of this constitutional question, as I believe they do; if they make it apparent that the

"one Supreme Court" is placed altogether in the hands of Congress as to its number, its quorum, and its manner of exercising appellate jurisdiction; and that the plan we propose is not the construction of two courts, but only the regulation of the manner in which the one court shall exercise its functions for the furtherance of justice, what further objection can be stated to allowing our court to do, when absolutely necessary, what the courts of England are doing under their present system with the utmost approbation and success—to sit in branches large enough to transact the business, and numerous enough to keep it from falling into arrears?

This very question was decided in the state of New Jersey, whose constitution, in language almost identical with that of our federal constitution, provides that there shall be "one Supreme Court."

The Supreme Court of that state found it necessary, and deemed it proper for the despatch of business, to sit in different branches at the same time; and the question was raised whether that was an infringement of the constitution of New Jersey. It was unanimously held by the court that it was not; and that plan has been in operation in that state ever since.

What is proposed on the other side? A series of intermediate appellate courts made up of circuit and district judges substantially; for I dismiss the idea that a judge of the Supreme Court can often be found there, in view of his other duties.

The "Davis bill," as recommended in the majority report, proposes to appoint two circuit judges in each circuit—eighteen new judges, with their appropriate retinue of clerks, marshals, and subordinates; and that, it seems to me, constitutes the eighteen most powerful arguments in favor of the "Davis bill" that have been brought forward.

But does any man need to be told that the business of this country cannot long continue without an increase in circuits? They are rapidly ceasing to be circuits; they are getting to be respectable portions of a continent. At present the Fourth Circuit includes Maryland, West Virginia, Virginia, North and South Carolina; The Fifth, Georgia, Florida, Mississippi, Louisiana, Alabama, and Texas; the Eighth, Minnesota, Iowa, Missouri, Kansas, Arkansas, Nebraska, and Colorado. They must be increased in number for the sake of the circuit business, irrespective of this matter of appellate jurisdiction. But whether increased or not, is there a lawyer having business in the federal courts, or any judge on the federal bench who does not know that the present judicial force is altogether inadequate to discharge the present judicial duty in the circuits? Yet you would impose upon them the additional duty of holding an appellate court of universal jurisdiction, consisting of not less than four judges, to be formed out of the circuit and district judges, with the addition of only two new judges in each circuit. The reinforcement would be entirely inadequate to enable the judges to perform these new duties in addition to the present duties. It cannot be done. This is, therefore, but the entering wedge. Instead of two new judges in each circuit, you will have to furnish four; and instead of nine circuits, we shall most of us live to see the day when the number will be eighteen.

But suppose, now, you have your circuit supreme courts in operation, with a sufficient number of judges, what follows? What course and character of decision is to be expected? Would it possess the uniformity which my friend (Mr. Hitchcock) tells us Judge Story deemed so important? Would it be such a salutary, uniform, equal, and consistent administration of the law as would commend itself to the confidence of the people?

What variety of law is not to be anticipated from nine separate courts, rapidly increasing to eighteen, sitting, not as in Illinois, side by side, but scattered over the breadth of the country, from Maine to California—in debtor states and in creditor states, in “hard money” states and in “green-back” states, in Northern states and in Southern states, in Eastern and in Western—pressed and controlled everywhere by interests so diverse, by traditions so different, by political sentiment so hostile, by local institutions so multi-form, by corporate influences so powerful?

What lawyer of experience does not know how completely the law of the land is a reflex of the spirit of the land—of its institutions, its traditions, its customs, its views—or how strongly it is controlled by popular feeling and local interests? What condition of the law, I beg to know, should we have had immediately preceding and succeeding the war of the Rebellion, from such courts as are now proposed, contrasting the decisions of the courts in South Carolina for instance with those in Massachusetts? Can we reasonably hope from such tribunals a homogeneous system of law, a uniform, harmonious course of decision, or is it likely to be a system of law under which a man who has a case in one circuit shall recover, while his neighbor across the line, with the same case in the other circuit, shall fail; under which the federal law shall be one thing here, and another thing there?

It has seemed obvious to us, that the creation of such a number of independent supreme courts, from whom appeals lie only in exceptional cases, will break up into discord and fragments that system of federal law, which some lawyers are beginning to regard as the last hope of the administration of justice in this country. The growing power of great corporations, and the operation of other causes which I need not rehearse, have shaken the confidence of the American people in the decisions of many of the state courts; and that

is the reason why the dockets of the federal courts are to-day overflowing, that is the occasion of the enormous increase of their business in the last ten or fifteen years.

The most precious judicial possession we have is the system of federal law. If its usefulness is to continue, it must be preserved in its integrity, in its uniformity, in its consistency, so that every man can feel that the justice that is applied to his neighbor, is equally applied to himself.

What gentleman of experience at the bar, upon thoughtful consideration—not upon a mere suggestion of convenience or expediency, but upon reflection will believe that this proposed plan is consistent with the probable preservation of the integrity, the harmony, or the value of the federal law of our country?

Pressed by these considerations, two observations have been made in reply by our friends on the other side. *First*, That the danger of conflicting and irreconcilable decisions will be obviated by the proposed provision authorizing the circuit appellate courts to allow, in their discretion, an appeal to the Supreme Court in any case, without regard to amount, where the question involved appears to be of sufficient difficulty and importance. *Second*, That if the Supreme Court shall sit in separate branches, as we propose, there would be danger of a similar conflict between the decisions of the different branches. Neither of these suggestions will prove to be well founded.

In cases involving less than \$10,000, the appeal (except upon constitutional questions) would not be a right, but would rest in the discretion of the judge, in view of the difficulty and doubt attending the questions. My own experience has not been that judges who have made decisions, have often been easy to persuade that they were probably wrong. An appeal should always be regarded as a matter of right; subject, of course, to a reasonable limitation as to amount, to

prevent the higher court being harrassed by frivolous controversy. That is the cardinal idea of all appellate jurisdiction. It should be a matter of right, and at the option of the party, not of the court.

Any system of appeal by favor of the court, to be granted or refused at discretion or at will, is but a mockery. It leaves to the court the absolute power of final decision, which the policy of our law accords to no judge, except in cases too small to justify appeal.

If, on the other hand, this provision is to be so liberally construed by the judges as to allow an appeal whenever it is demanded, then as many causes as ever will pass to the Supreme Court, and no relief to that body will be obtained.

And it is to be borne in mind that the limit of \$10,000, below which no appeal as of right is allowed, comprises the great mass of controversies and questions that come before the federal courts.

In the conclusions reached by two different branches of the Supreme Court, there would be no possibility of conflict. These branches would sit at the same place and time, in daily intercourse and consultation. The decisions of both, as they would have to be reported to the full bench before being promulgated, would necessarily be known to all members of the court before they were announced. In fact, they would not be announced, unless the other members of the court were prepared to adopt them. A doubt on that point would at once produce a reargument before the whole court. And there could be no such thing, under these circumstances, as a decision by one branch one way and by another branch in conflict with it, especially as the arrangement of judges in the different branches would not be permanent, but would be changed from time to time.

It is in order to guard against the infinite mischief of conflicting and fluctuating decisions, that the wisdom of

the constitution requires "one Supreme Court." We of the minority are contending for the essence and the spirit of that provision—that there should be one Supreme Court in reality and in substance as well as in name. While our friends—who "cavil on the ninth part of a hair," lest the theoretical unity of the court shall be infringed if every member of it does not personally participate in every hearing—would set up nine or more Supreme Courts, widely asunder, each practically of the last resort, so far as the great mass of the business is concerned. I venture to assert, sir, that such an experiment, however convenient, would prove disastrous.

It may, indeed, well be doubted, whether upon the true construction of the constitution, any part of the appellate jurisdiction given to the Supreme Court can be taken away from it, and conferred upon the "inferior courts that the Congress may from time to time ordain and establish." The language is, "in all the other cases before mentioned" (that is, in all cases to which the judicial power extends, except those in which the Supreme Court has original jurisdiction), "the Supreme Court *shall have* appellate jurisdiction, with such exceptions and under such regulations as the Congress shall make."

The reason of this provision is obvious. It is that the judicial power shall have one head—one court of last resort, in which the law shall be uniformly declared. What is its construction? Does it mean that the Supreme Court shall have appellate jurisdiction in all cases, except where Congress shall think proper to confer that appellate jurisdiction upon the inferior courts, so that there may be various appellate courts of last resort? or does it mean that the appellate jurisdiction, so far as it exists at all, with the exception only of those cases in which it is refused altogether, shall be vested in the Supreme Court of the United States, under

such regulations, as to the manner of its exercise, as Congress may prescribe? That Congress may restrict and regulate the appellate jurisdiction, is plain. Can they transfer it to the inferior courts? If they may do so in part, then beyond question they may do it in whole; they may take away all the appellate jurisdiction of the Supreme Court, and leave it only the barren function of its few and rare cases of original jurisdiction. They might virtually legislate the court out of existence, and completely deprive it of its power to determine constitutional questions, by taking away the appellate jurisdiction through which alone such questions can be brought before it. I cannot believe that constitutional lawyers would regard such a conclusion as sound or safe.

But suppose that we interpret the constitution to mean that the appellate jurisdiction may be thus divided and carved up, and the larger part of it sent to the inferior courts; then, when that has been accomplished, what is the result? What becomes the function of the Supreme Court?—To sit with dignity and ceremony, to hear only cases involving more than \$10,000 in amount; not those presenting questions of importance or difficulty, but those involving the controversies of the very wealthy. How large a proportion of the cases pending to-day in the federal courts, involve more than \$10,000 in amount?

The cases of that magnitude are principally those of the great corporations, whose existence and whose extension is already a subject of the gravest foreboding among reflecting men. Their enormous power is the coming cloud in our sky. You virtually set aside the United States Supreme Court to be a tribunal for the use of such corporations, and of those wealthy men whose controversies involve a larger amount than nine-tenths of our people accumulate in a lifetime.

No longer the Supreme Court of the constitution, open to the whole people, but the special court of the railroad

magnates and other men of that stamp, and of the rich corporations. What follows? In my judgment, as sure as night succeeds day, when that time arrives, the hold of the court upon the esteem and confidence of the American people will perish.

When its doors are closed to the great mass of the people, when it ceases to transact their business, and is set aside as peculiarly a rich man's court, it will sink in the estimation of the people, and become an object of jealousy, aversion, and distrust.

Once make any institution in this country permanently unpopular, and its destruction is but a question of time. Public opinion is ultimately irresistible. That is the only ultimate foundation of every institution we have, and one that is attempted to be founded or sustained upon any other basis, is the house that is built upon the sand.

We know how many times the suggestion has been made on the floor of Congress, that it was not the true function of the Supreme Court of the United States to determine constitutional questions, except so far as they affected the rights of litigants; and that the judgment of that court upon such questions was not to be taken into account, or to stand in the way of the legislative branch of the government. That suggestion always comes forward, when the constitution, as expounded by the courts, stands in the way of party schemes or popular excitement. But it has been put down hitherto, by public opinion, which has stood fast by the idea that the very sheet-anchor of our government, was the power of that court to restrain the executive and legislative branches from infringing the constitution.

Would any wise man desire to see that power withdrawn?

Read the history of the last three months in Congress. Does any one desire that should be the last tribunal in this country to determine what is and what is not within the provisions of the constitution?

Would any man feel safe if there no longer existed any restraint upon Congress, on constitutional grounds judicially determined? I think not. Once take away from the court the strong support of public confidence and esteem,—once bring the people to believe that it exists no longer of them or for them, but only to subserve the purposes of a class which they distrust and fear,—that there is one court of last resort for the rich, and another for those who are not rich; and then establish the proposition now contended for, that the jurisdiction of the court may be taken away by Congress and conferred upon more popular tribunals, and the power and usefulness of that eminent tribunal will rapidly perish. It may continue to exist in name, but in name only.

It is true that the present limit of the Supreme Court jurisdiction is \$5,000, but I venture to say there is no lawyer in the country who would not declare that limit to have been felt oppressive. It has only been acquiesced in because it was believed to be unavoidable, by reason of the accumulation of business. If it cannot be set back, as it should be, where it once was, do not, at any rate, let it be increased, and increased to such a sum as will turn out of the Supreme Court the great mass of our people.

I am aware that the argument of convenience has carried away many persons, in the active canvass that has been made in favor of this bill; and the interest of the localities that expect to obtain these new courts, and the personal efforts of those who may expect appointments under it, have had a considerable effect in favor of the scheme it proposes.

It is not to be denied, that to many counsel, these proposed courts would be more convenient than having to go to Washington to argue appeals. But if that were all there is of this question, it would be altogether beneath the level of the appropriate action or inquiry of this body; it would be a mere matter of regulation of detail, not worth our while to interfere with.

When I may have to argue an appeal in the federal court, it would unquestionably be easier and more agreeable for me to go to New York or to Boston, than to Washington; and as we get farther West, this consideration is felt to a much greater extent.

But are there not considerations in respect to the administration of our judicial system at large; the true construction of the constitution; its wise application to the administration of justice; the future of the Supreme Court itself, which all must agree should not in the least degree be imperilled in public estimation;—is there not something in all this, that is of more consequence than any question of the expense or time of counsel?

Is not the proper and permanent administration of justice of more importance, than any matter of mere convenience?

I should ask your pardon for occupying so much of your time and attention.

I have no personal feeling about this bill; it is nothing to me nor to my associates, who agree in these views, more than to any other citizens; we have engaged in no canvass on the subject, nor have we attempted privately to influence any man's opinion, nor the action of any association or legislature. But as long as the duty of examining the subject was cast upon us, unsought, by your action, we have felt it to be but a proper discharge of that duty, however imperfect, when an expression of opinion is asked from you that may have weight in Congress and elsewhere, to endeavor to bring before you as clearly as possible, the considerations which we believe ought really to be decisive.

C. C. Bonney, of Illinois, said:

Mr. President,—I have been requested to follow the learned gentleman (Mr. Phelps) who has just concluded his remarks on behalf of the minority report.

Conscious of the fact that the time which can be devoted

to this discussion must necessarily be limited, and that there are probably several other gentlemen who will feel it a duty to express their views, I shall endeavor to condense into the briefest compass what I feel called upon to say in support of the majority report.

Let me first say that originally all the bias of my mind was in favor of the scheme set forth in the minority report. Whatever prejudice I had was opposed to the appellate court system, and it has only been after the most careful and patient examination of the subject, now continued for several years, that I have come to a deliberate conviction that the first impression I entertained in regard to the subject ought not to prevail, but that the only practical measure of relief for the courts of the United States is to be found in some method substantially such as that contained in the bill presented in the United States Senate by the distinguished senator from Illinois.

The state from which I come (Illinois) has suffered all the evils of an overcrowding of its highest judicial tribunal by a mass of business beyond the working capacity of its judges. It tried an experiment which I trust will not be repeated in any other of the United States. The judges of the court of last resort, when the cases before them rapidly increased, undertook to keep up with the business and dispose of the cases by dividing among them such time as they could give. What was the consequence? It was what must inevitably result from such a state of affairs—a deterioration of the work of the court, and a consequent lessening of the esteem in which it was held in the community where it pronounced its judgments. But at length a system was adopted that has been found entirely adequate to remedy the evil. I refer to the establishment of an Appellate Court in the State of Illinois, upon substantially the same principle as that contained in the Senate bill.

There was at first a general prejudice of the profession against the establishment of that court. Many of the arguments made here against the proposed United States Court of Appeals were urged against the Illinois tribunal. It was said it would be another obstacle in the road to the court of last resort, would double expenses of court officials, and multiply fees to be paid to counsel. Other objections were raised. It was claimed that the intermediate court would settle nothing, and that its decisions would be conflicting in the different districts.

When you bear in mind the magnitude of Illinois—its one hundred and one counties, its enormous increase in population and wealth, the great amount of commerce concentrated at its chief mart—you may estimate the variety and extent of business in its courts. The appellate court system has proved a practical success in that state. It has remedied the difficulty and has prevented its recurrence.

No measure of relief which can be adopted with reference to the United States courts will fully meet the requirements of the occasion unless it provides not only for the present, but also the future.

In that opinion I think we all agree. It is confessed on both sides that the circuit judges provided a few years ago for the nine judicial circuits are now overworked in their respective courts, and the time is not very far distant when they will be quite unable to dispose of the cases now so rapidly accumulating. There is as much necessity for relief of the Circuit and District courts as of the Supreme tribunal. The plan of the majority report provides for that contingency, and I venture to say that if the proposed increase should at once be carried into effect, a large portion of the time of the new judges, at least half of it, would be required in the discharge of circuit and district duties. As was stated by the learned gentleman from Vermont (Mr. Phelps), a

large portion of the cases in the United States courts are those involving great and overshadowing interests that cannot well be dealt with by the tribunals established in the several states. And it is obvious that the business of the national courts must largely increase. The regulation of inter-state commerce, and the cases which will arise in the course of the transportation business alone, will crowd the national tribunals. The powers of the great carrying corporations are greater than those of some of the states, and only the authority of the nation is strong enough to protect the rights of the people. And there are other sources from which other cases must arise, but the time and the occasion forbid even their enumeration.

There is one provision of the Illinois Appellate Court Act that I think it would be an improvement to add to the proposed appellate court system of the United States, that is, a provision that constitutional questions and others of the highest character should not go to the Appellate Court in the first instance, but should be taken directly to the court of last resort. That provision saves the expense and delay of taking through the intermediate tribunal cases which, from their magnitude or the nature of the questions involved, are morally certain to go to the Supreme Court at last.

It is argued that a division of the Supreme Court of the United States into sections would answer the requirements of the present business before the courts; but it seems to have been overlooked by our learned friend. (Mr. Phelps) that if the plan of the minority is carried out, it will still leave upon the Supreme Court all the responsibility of the entire mass of business before it.

It is said the court can dispose of its business by sitting in sections, each taking the cases assigned to it, with a proviso that certain cases shall come before the full bench. But much time would be taken up in examining the cases so

far as to determine whether or not they are of a nature which requires that they should be heard by the entire court.

It seems to me that is a difficulty which, standing by itself, would prove an insuperable barrier to a practical success of the minority scheme.

Then, again, the opinions of the several sections would necessarily be reported as those of the district and circuit now are; and there might be a conflict of opinion, one division of the court sitting in the trial of a cause delivering an opinion of a particular character, and another department of the same court, in a case involving a similar question, delivering an opinion of an opposite nature. Where, then, would be that uniformity of law which is said to be so desirable and indispensable?

Suppose a case is heard before a division, and an opinion delivered, and the case then reheard before the full bench, and the opinion of the division overruled. The judgment of the division would only be like that of a circuit or appellate tribunal, whose opinions may go up for revision, and the high dignity of the Supreme Court would be impaired.

In my judgment it is not the office or function of the court of last resort to try controversies between individuals. Incidentally it does declare rights between man and man in the cases brought before it; but it was said long ago by a great judge that the chief duty of courts of justice—and, let me add, far more the chief duty of the highest judicial tribunal known to human government—to declare the law and the principles of justice, and only incidentally to decide the rights and interests of the parties to the particular cause before them.

To select out a question of law upon which some case may depend, and decide it, requires much less time, but a far

higher order of learning and ability, than it does to apply the settled law to the facts involved in a case before a trial court.

One great difficulty under which the court now labors might be overcome by a modification of its rules. I refer to the practice of taking to that court bushels of pleadings and proofs to obtain judgment on a single grain of difference between the parties. I think the rules should be so changed as to require a selection and certification to the court of last resort of just the question of difference which the court is asked to decide. It would thus be spared the labor now imposed upon it of examining voluminous records of no importance to the controversy, and of no interest to the profession or the country.

It is argued in favor of the minority report that the establishment of appellate courts would not bring justice any nearer to the people of the various circuits, or but little nearer, than if they should go to Washington. In my own state of Illinois we have a Central, a Northern, and a Southern grand division of the state for sessions of the Supreme Court, thus obviating the necessity of long journeys, and in that way the administration of justice has been brought conveniently near to every suitor. The national appellate courts proposed in the majority report, may be required to hold sessions at different points in the several circuits, and thus bring the administration of justice reasonably near to all litigants.

A few words touching the right of appeal. It is a reproach to our administration of justice that there has been so much appellate litigation without regard to whether there was probable cause for litigation or not. There should always be a probable cause upon which to base an appeal—some point upon which the court has probably erred and a reversal may be obtained. I deny entirely that there should

be an appeal as a matter of right where any particular amount of dollars is involved, but would rather say it should be limited to those causes which, from the nature of the questions raised or of the subject-matter of the controversy, are deemed fit to be carried to the court of last resort.

The matter should be regulated in such a way as to prevent the multitude of appeals taken for delay or other vexatious reasons.

Now, it is said the decisions of these proposed appellate courts will tend to create a kind of "local law," peculiar to each circuit, and differing from the others. That does not seem to me to be a sound objection. We now receive the decisions of the circuit and district courts in the *Federal Reporter* from week to week.

The profession are becoming better acquainted with the national judges than they have hitherto been, or could be without such a medium of communication.

This publication of their opinions from week to week brings the views of the circuit and district judges in California before the judges of Massachusetts and Vermont, and *vice versa*, and will necessarily tend to make their decisions harmonious and of a higher character.

Should conflicting opinions appear, immediate steps would be taken to remove a test cause to the Supreme Court for examination and final determination, as has been the practice in Illinois.

As to the expense of establishing the proposed intermediate courts, I think it is not deserving of serious consideration. No part of the treasure of the nation ever has been, or will be expended for a purpose more precious to the people than the administration of justice. Until we have ceased to blush over expenditures of a different character, we need hardly pause to consider whether a few thousand dollars more can be spared for the support of courts of justice.

Let me also observe, in passing, that it is a great evil that public questions in which the whole people are interested are left to find their way, through some private quarrel, up to the judicial tribunal of last resort. This is an evil that cannot be changed too soon. It ought never to have been tolerated under our system of jurisprudence. Provision should have been made long ago for direct application to that court by Congress, or the Chief Executive, or by any state of the Union, for the decision of any question of great public moment, such as the power to make paper a legal tender, or the right to tax the process of state courts. Why should not a state have maintained an original bill in the Supreme Court to declare the unconstitutionality of the old internal revenue tax on its judicial process? There would seem to be no greater difficulty in such a case than in a common suit in equity to declare a trust or to interpret a will. Such suits would be a relief in their directness, simplicity, and prevention of a multiplicity of litigation, rather than an additional burden.

Let me detain you a moment longer to recur to some of the points urged and questions asked by the learned gentleman (Mr. Phelps) who submitted the minority report. He asks, Would any one change the present system were it not for the necessity?

I answer, Yes; it ought to be changed, because the increase of cases in the national courts, and especially in the Supreme Court, will continue with the growth and development of the country until the utmost powers of the members of that tribunal will be exhausted and overwhelmed, unless an additional tribunal, like that of the proposed appellate court, shall be established.

It is also inquired whether it makes any difference what the judges absent from the bench are doing? I think it makes a very serious difference whether two or three justices of the

Supreme Court of the United States are sitting in another room in the Capitol, and there forming and delivering opinions to be promulgated through the country as the opinions of that court. The more I reflect upon this question, the more it seems to me that all the evils which are feared from a conflict or difference of opinion among different appellate courts would be aggravated many fold by the proposed division of the Supreme Court into sections or departments.

Let me suggest to our learned friends that they themselves are really proposing a system of intermediate courts; for what are the proposed sections, sitting as separate tribunals, though held by justices of the Supreme Court, but intermediate courts of appeal between the circuit courts and the one Supreme Court? If the justices of the Supreme Court are to sit in a tribunal composed of two or three, it will be as when they sit in the discharge of circuit duties, and not as justices of a last and final determination. I submit, then, that the minority plan is only another form of an intermediate court, which we think would soon be overwhelmed with the duties pressing upon it, and would more and more disable those judges from performing their highest judicial functions in the manner in which they ought to be discharged, and would be, but for the pressure of business upon the court.

A serious constitutional question is involved in the plan urged by the minority report. Able lawyers and judges gravely doubt whether such a division as is proposed would be constitutional. Let me waive that question, for the sake of the argument, and consider the probability of success in the practical working of the contending plans. It seems to me that upon that ground, without touching the constitutional question, we shall easily reach a conclusion that the safest experiment to try is that which promises the largest

measure of success; that which can with the least difficulty be put in practice, and, if not successful, most easily changed; and that is the system of the proposed intermediate courts of appeal.

We cannot justly compare this country with England, as our learned friend (Mr. Phelps) has done. That country is much smaller in extent, many centuries older, much further advanced in the settlement of its business and the determination of questions evolved in the course of civilization. This vast Republic, embracing so many great and varied interests, the sources from which questions of the most complicated and important nature have arisen and must arise, is a very different field.

Neither do I think it a just objection that in the large cities the proposed intermediate courts would not be able to keep up with the business; for a great city like New York, or Chicago, ought proportionately to have twice or three times as many judges as the number required in a country circuit.

I will not detain the Association to reply to the suggestion that the proposed eighteen new judges constitute the eighteen most potent arguments in support of the Davis bill, because it is hardly germane to the subject, and there are greater and higher interests involved.

In conclusion, after a patient and painstaking examination, not only for myself and my associates here, but also in behalf of many others whose views have been expressed to me, I ask this Association to declare its judgment in favor of the proposed intermediate appellate courts. The bill embracing that plan has already received the sanction of the United States Senate,—no mean indorsement, when that body contains so many eminent jurists. It now goes to the House of Representatives; and, approved by public opinion and indorsed by such an Association as this, it can hardly fail to become a law, and afford the desired relief.

W. H. H. Russell, of Missouri, said :

Mr. President, Gentlemen of the Bar Association, and Ladies,—I hope the measure recommended by the majority of the committee may never go into force and effect; it is one of the most dangerous measures ever submitted to the consideration of the Congress of the United States.

Since the very able reports of the distinguished committee have been carefully prepared and submitted to this Association, it becomes every member of the American Bar Association to consider with the utmost care the vote which he is to give upon this measure.

It strikes at the foremost pillar of the fabric of this Republic—the judicial system of the United States.

Let us pause and consider for a moment some of the features that underlie this measure.

Of course, my friend from Chicago (Mr. Bonney) supports this bill, because it emanated from the judiciary, or part of the judiciary, of the state of Illinois; and allow me to pause there just one moment.

I regret to differ from my colleague from Missouri (Mr. Hitchcock), and am sorry I cannot construe this bill as he does.

In June, 1878, there was a call signed by the most distinguished members of the Bar of the United States, such as B. H. Bristow, of Kentucky; W. M. Evarts, of New York; Randolph Tucker, of Virginia, and some twelve other gentlemen, calling members of the Bar throughout the United States to form a Bar Association, whereby delegates representing the profession in all parts of the country might meet together annually for a comparison of views and friendly intercourse. Its object was to be "to advance the science of jurisprudence, promote the administration of justice and uniformity of legislation throughout the Union," etc.

No higher or worthier object could we have in view than that; but we never shall attain such an object by supporting

such a measure as the one embraced in this Davis bill, so-called.

I must oppose the resolution of my friend Mr. Hitchcock because it seeks the adoption of the Davis plan, which consists, as we have heard, in the proposed establishment of nine intermediate courts, of five judges each, and limiting the jurisdiction to \$10,000. If there is any member advocating that bill who can say that the administration of justice is promoted by such a limitation, I cannot agree with him; because one citizen of this Republic may have a case involving \$9,000 cannot go the Supreme Court of the United States under this proposed plan, while another one, who may be a wealthy corporation, who has \$10,000 involved, can avail himself of that resort. Does such a state of affairs as that harmonize with the principle laid down by the distinguished jurist Judge Story, whose language has been recalled here this evening? That author says one of the fundamental objects of a good government must be the administration of justice. I venture to suggest there is no justice at all in a measure that provides an appeal for \$10,000, and refuses it for \$9,000.

To obtain a final decision by the Supreme Court in any case under this Davis method, the amount involved must be \$10,000, exclusive of costs; a sum so large that it is practically a denial of justice to the majority of suitors.

I could not make a more forcible illustration than by quoting a few words from the eloquent language of one of the most able statesmen England ever produced—Lord Brougham. In one of his masterly efforts, in discussing a bill like this, he said: "It was the boast of Augustus that he found Rome of brick, and left it of marble; but how much nobler shall it be for that sovereign who can have it to say he found law dear, and left it cheap: found it the patrimony of the rich, left it the legacy of the poor; found it a sealed

book, left it an open page and living letter; found it a two-edged sword of oppression, left it the staff of honor and innocence?"

Yet the committee, by its majority report, asks the American Bar Association, which we have been told in one of the addresses is conservative in its nature, to ask a tribunal which sings only to the music of the almighty dollar, to pass a measure which compels a man of under \$10,000 to submit to one of the most dangerous features of legislation of the present time.

The gentleman from Chicago (Mr. Bonney) spoke about the matter of expense, and said that was not an element to be entered into. I venture to disagree with him; it is an element, and an important one. The expense in the Federal judiciary has increased largely since 1869-70; and, instead of diminishing, the business of the Supreme Court of the United States has increased.

Will the establishment of these additional courts, from which appeals may be taken, diminish the business of the Supreme Court? No; it will largely increase it, and it will very largely increase the expense.

In 1850 the Federal judicial expense was \$467,000; in 1860, \$900,000; in 1865, \$1,108,000; in 1870, \$2,392,000; in 1875 the expense of the Federal judiciary of this Republic had increased to over \$3,000,000; and you would put the additional expense of nine additional tribunals, thus incurring a heavy expense for the taxpayers of this country to bear in addition to what is now upon their shoulders.

Will any logic, such as was suggested by my friend from Chicago, convince the citizens of this Republic that such legislation is wise?

Of the present number of cases in the Supreme Court, one-half of them come from five states—New York, Illinois,

Louisiana, Missouri, and Pennsylvania. I refer to the present docket of that court; it shows:—

New York,	.	.	.	.	.	.	156
Illinois,	.	.	.	.	.	.	86
Louisiana,	.	.	.	.	.	.	80
Missouri,	.	.	.	.	.	.	73
Pennsylvania,	.	.	.	.	.	.	56
District of Columbia,	.	.	.	.	.	.	53

That will give some idea of the distribution of the business of the several states in that court.

The gentleman from Chicago urged as a reason why we should adopt this method, that it had passed the Senate of the United States. What of that? It has yet to pass the House of Representatives, whose members come nearer to the people. I am in the confidence that they will not pass the bill offered by the senator from Illinois.

I hope, Mr. President, that every member will carefully consider the elements contained in the minority report, and contrast them with the report of the majority. I trust that, when you come to vote upon it, you will vote down the majority report, and say that this Davis bill shall not receive the recognition of the American Bar Association.

Upon motion, the Association adjourned until 10 o'clock Friday morning.

Friday Morning, August 11.

The meeting was called to order at 10 o'clock A. M., by the President.

Isaac M. Jordan, of Ohio, read a paper: "Trial by Jury; its Defects and their Remedies." (*See Appendix.*)

Upon the conclusion of the reading—

John W. Stevenson, of Kentucky, requested that his motion relative to the place of the next Annual Meeting be taken from the table. He said :

I have here a modified resolution to offer in place of the original :

Resolved, That the Executive Committee be requested to call the next Annual Meeting of the Association at the Green Brier, White Sulphur Springs, W. Va., provided satisfactory arrangements can be made as to terms and transportation.

Benjamin A. Willis, of New York :

I hope the last part of that will be eliminated; I don't know that we want to get there half rates, and as for the other part, we will trust ourselves in the hands of the West Virginians. I move to amend the resolution by striking out all after, and including, the word "provided," thus leaving the resolution in its original purity.

Seconded by William Preston, of Kentucky.

Mr. Stevenson :

I accept the amendment, and ask the Secretary to read the original resolution.

The Secretary then read the original resolution.

L. P. Poland, of Vermont :

That original resolution fixes the time : I think that should be left as a matter of after consideration.

Mr. Stevenson :

I agree to that also.

The Secretary then read the original resolution, which amended is worded as follows :

Resolved, That the next meeting of the American Bar Association be held on the —— day of August, 1883, at

the Green Brier, White Sulphur Springs, in Green Brier County, West Virginia.

A division being called for upon the adoption of the resolution, it was taken by a rising vote, resulting as follows:

In favor of the resolution, 38; opposed, 27.

U. M. Rose, of Arkansas, offered the following resolution:

Resolved, That on the argument of the pending question, each speaker shall be limited in time to ten minutes; *Provided*, That this limitation shall not apply to any member of the reporting committee.

The resolution was seconded by Chas. A. Peabody, of New York, and unanimously adopted.

William Allen Butler, of New York, offered a resolution as follows:

Resolved, That the Committee on Jurisprudence and Law Reform be authorized to make any verbal changes in the draft acts submitted by them which they may think necessary to render the same more perfect.

This resolution was also adopted.

Luke P. Poland reported an additional list of names of proposed members, all of whom were elected.

The President:

The business now in order is the continuation of the debate of last night, upon the acceptance of the majority report on business in the Supreme Court.

After the resolution had been read by the Secretary—

William M. Evarts, of New York, said:

Mr. President and Gentlemen of the Association,—By the courtesy of the Chairman of the committee, Mr. Phelps, with whom, in the minority report, I had the honor to agree, it has been understood that I would close the pre-

sentation of the views of the minority; and as no disposition has been shown on that side to press the discussion further, I may assume that whatever I shall present will be regarded as completing our contribution to the discussion; and after we shall have had the pleasure of listening to some arguments in reply upon the other side, we may hope that the Association, by its own consideration of the reports, by its own intelligence, further unassisted by the committee, will be ready to express its views in its vote.

I move to amend the resolution by striking out the word "majority," and inserting the word "minority."

I may be excused for a moment in calling attention to the general function of a government in providing justice for the needs of the people over which it rules. I am disposed to think there is very little difference of view on that general question. As Mr. Burke has said, justice is the main policy of all human society; yet in the administration of that great trust reposed in government, it cannot be said that it is an inherent duty in government, on that great head of its authority, to give a day in court, on all their controversies, great or small, to the humble or the proud, to the strong or to the weak, more than once.

Every court of every civilized and moral government should be a good court. It should have a judge competent and upright; it should have principles of justice and of procedure that are honest and suitable; and when the government has opened its courts once to all its citizens, it has done its duty, in that regard, to the particular citizen, whether he be great or small. What, then, further, is there in the system of judicature or jurisprudence, of judicial establishment or of maxims of administration, except to see to it that the same justice is administered in all the courts—to the humble and the proud, the weak and the strong, the rich and the poor?

And out of that obligation grows the establishment of appellate systems, without which the natural divergence of different minds and different courts, however intelligent and however upright, would soon make a tangle and a discord of what should be plain and uniform ; and that is the best appellate system that has the most direct connection between all the courts of original jurisdiction and the final unity of the law that presides over them all. Whatever of intervention, whatever of interception, whatever of delay, whatever of new arguments and new divergence arise, whatever the steps of appeal, is, in so far, a departure from the true theory of unity and simplicity and equality.

The framers of our Constitution, Mr. President, were as wise, as well equipped, as sagacious and circumspect in the framing of the judicial as in any other department of government. The people admire, the world admires, the wisdom of their political arrangements ; the lawyers better, perhaps—the lawyers of all countries—admire the judicial establishment of the United States.

It has furnished a model for the growing communities of the states, and I think it is the professional opinion that, in so far as the state establishments have varied from that great model, they have yielded to circumstantial and temporary impressions, and lost sight of the pole-star by which the whole system should be steered.

There was a clear insight into this primary principle which I have insisted upon when, in a few brief words, the Constitution prescribed that there should be one Supreme Court. But that was but a title, unless the Constitution defined what was meant by the unity and what was meant by the supremacy. And in a few words—every one of which bears the impression of wisdom, every one of which will suffice to the exigencies of the vast populace of a wealthy community as for the sparse population and the moderate interests to which it was originally

applied—we have a definition as to wherein the supremacy of the Supreme Court itself existed, and whereby it shall be maintained; and I appear, as does the portion of the committee with whom I concur, to maintain the Constitution and the frame that our forefathers gave to the judicial system of the United States: to be deterred by no width of territory, magnitude of interests, or vastness of population from adhering to the point that there shall be but one Supreme Court, and that there shall be a step at once from the courts of original jurisdiction to that Supreme Court.

But now for the first time there is proposed a departure from the scheme of the framers of the government, and the interposition of another court that is to be supreme and final in a great mass of the litigations of this people.

We all agree as to the great pressure upon the judicial establishment, growing out of no misfortune and no disaster; of no disappointment of the patriotism and the hope of our fathers or of the succeeding generations; but simply by the magnificence of the results which have grown out of the great institutions that we have inherited. It is our prosperity; it is our wealth; it is our population; it is our vast territory; it is the immense development of science and of art that makes this great country full of living, independent, individual men; that teaches them their rights and makes them dare to maintain them; that conducts them in obedience to the law, and makes them all bow to its maintenance and its authority; that crowds our courts with the steps of the votaries of justice that are drawn unto them; and the question is for us not how we shall repel them, but how we shall welcome and accommodate them.

The business of the Supreme Court may be separated from that of the courts of original jurisdiction in the question of inconvenience or of pressure which we are considering. We have the fact that the court, grown up as it has, and

constituted as it is in membership and in numbers, with its enlarged business, is no longer adequate to control the administration of its business so as to satisfy the rightful demands of suitors for its speedy and effective distribution.

There are but two modes of disposing of this difficulty. Either the Supreme Court must be put into a course of administration of its functions, which will enable it to discharge its great duty as the only Supreme Court ; or else, in despair of maintaining the great idea of the judicial establishment, we must deprive it of part of its business, and give it to others.

The measure of the minority undertakes, while it preserves the full bench for all the great constitutional questions of its peculiar jurisdiction, to distribute the hearing of private causes among quorums of a less number than the full bench. It is demonstrated by the statistics that if you will give this court the working force of two quorums to do the general business of the country, without further change, you will work down the present accumulations in a few years, and thereafter maintain the business of the court where it will not fall into arrears again. All that is desired will be accomplished without depriving citizens of any state of the rights that they now possess in the matter of appeals, and without robbing the court of its entire supremacy as an appellate court, nor embarrassing the steps of revision by interposing a new stage of interest and litigation. This is worth accomplishing, if it can be done, and I have heard no adequate, no very thoroughly considered objection to this method, except whatever there may be in the doubt as to its constitutionality, which I shall consider briefly at an appropriate stage in my remarks.

All other objections that favor the intermediate establishment, seem really to carry a preference over the scheme of ONE Supreme Court in favor of the arrangement of groups

of states to have for their final administration of justice, in the great mass of the litigations of their population, a supreme provincial court, that never introduces the Supreme Court at all into its discussions.

What is there, then, in the Constitution that bears upon either of these methods, or upon either of these principal considerations of the unity and of the supremacy of one single supreme court in this country? In the first place, the provision is that the judicial power shall be vested in ONE Supreme Court, and in such inferior courts as Congress may establish. Now, the sticklers for a literal construction of the provision for unity, expressed in the single word "one"—who would exclude a convenient administration of that unity as a possible resource to the government, though it does not maintain the undivided relation that absolute unity might be supposed to exact—overlook what is the principal definition of the tribunal that its oneness should be all, and cause all, its supremacy. And where do we find the definition of its supremacy? Why, in the next clause. After defining the original jurisdiction of this tribunal, (which has nothing to do with its supremacy whatever); having said what shall be original in this one supreme tribunal, in explicit, comprehensive, and peremptory terms, it continues that in all other cases before mentioned, (that is in the whole subject of Federal jurisprudence and Federal judicial establishment), "it shall have appellate jurisdiction in law and in fact, with such exceptions and subject to such regulations as Congress shall make."

Now, whatever Congress can properly do within this clause of the Constitution, is not a regulation that touches the supremacy of the Supreme Court. Whatever else it may do in determining, on the principles of general policy, what shall be the regulations of appeals and what shall be the exception, as to what is appealable or not appeal-

able, it cannot, in the spirit of this clause of the Constitution, create another appellate court that is final and not subordinate to the Supreme Court. Where is your unity and where your supremacy gone if, under that clause—which was meant merely to except from the absolute generality that every subject in the jurisdiction of the courts below shall come up—you establish another appellate court? When the Constitution says there shall be such inferior courts as Congress may choose to make, they may multiply, they may become as numerous as the stars in the firmament, but there shall be but one sun. There shall be no cluster of stars that shall interfere with the gravitations of the system in respect to its judiciary, any more than in respect to its political establishment.

Let me call your attention to one striking feature of the Davis bill which is favored by the majority report.

There is just as peremptory a provision in the Constitution that the Supreme Court shall be an appellate court on questions of fact, as there is that it shall be so on questions of law. And yet this bill, that has passed the United States Senate, absolutely deprives the Supreme Court, by statute, of any appeal to it upon questions of fact, except on the single subject of patent law. This illustrates the danger of being governed by forms and not substance; for if they could have passed that law with that merely formal, or, so to speak, colorable exception, they could have passed it without any exception at all, and our learned friends would be contending that the provision of the law that robbed the Supreme Court of one-half of its supremacy, and conferred it absolutely upon other courts, was constitutional. By this measure the final power of re-examining facts is given to newly created courts, not named in the Constitution. It is like tearing out of the Constitution the clause that gives the one Supreme Court appellate jurisdiction as to fact.

Let us consider whether there is not also some danger that, in the revision of law, there may be an equal constitutional infraction, when there are final courts provided that are appellate and conclusive in the great mass of litigation of the people. Let us look at the distribution of the judicial power in the matter relating to the great constitutional ideas which are to preserve the state governments intact, and support their frame out of which and for which the general government is provided. If there be anything to be read in the Constitution of the United States, it is that our establishment of government, complex and difficult as it is, involving systems that may run against one another, shall be carefully limited to the two political autonomies within their spheres of the states as individual states, and the Union as an undivided indivisible nation.

I will not dwell upon our bitter experience that, out of fewer elements for discord than ever attended the progress of a people, there has been produced a vehement collision, that shook the states and the nation equally, because there came to be an aggregated force, combinations of states geographically and of their social interests that was not provided for in adjusting the orbits of the individual states in their revolution in our system round the central orb. And now I find that under motives of convenience, and under technical, temporary, and superficial influences, is to be built up permanently by law, under our Constitutions, groups of states that are to maintain *quasi*-supreme courts, each in their own province and for their own interests.

Look at the arrangement of the courts of first instance, or the inferior courts, under the Constitution. No one of them goes beyond the state. There is no court that sits in this country but the Supreme Court that has jurisdiction outside of and beyond the boundaries of individual states. We

have an arrangement by which a circuit judge becomes, *pro hac vice*, and from time to time, a part of the court in each state within his circuit. But the court never goes beyond the state. There is no grouping together of bar, of jurisprudence, of judicial combination and interests, of zeal and pride that goes beyond the single district in which each court stands. This measure is an introduction into our scheme of government of a combination of a group of states that are to have a system of jurisprudence peculiar to each combination.

I do not insist here upon what has been discussed—the danger of separate and independent schemes of jurisprudence. I am now asking you to see the innovation upon what I regard—and I believe every thinking man regards—as the very basis of the unity of this Government and, it seems to me, of the independence of the states. By this aggregation of provincial courts you rob the states of a certain part of their individual independence.

I regard with alarm this step as the possible commencement of groups of states whose interests will become diversified; a separation of the states into distinct groups—of the New England states, of New York and Pennsylvania, of the Southern states and the Mississippi Valley states, the Pacific Coast states, the great Northwest and the great Southwest, and the great Central states, each group having a separate administration of justice, separate ideas and views, separate policies of the law.

Why is it we cannot sufficiently provide relief for the Circuit Courts by an increase in their judicial force? The accommodations needed for the increased population and growth of business are felt to be as pressing in the courts of original instance as in the Supreme tribunal at Washington. Why not preserve the idea that, however much you multiply them, however many more judges you contribute

to them, you yet preserve them, as a groundwork of original jurisdiction, with no appellate authority between them and the Supreme Court?

The only reason for any change is that the business cannot be transacted by the Supreme Court while its entire judicial force is applied to the consideration of every private cause. Who is it that thinks it is wiser and better to have an appellate tribunal of nine judges rather than of five? I am now looking at it merely as a tribunal suitable in its arrangement for the hearing and determination of causes, and having no considerations of a political or politico-legal significance in the problem. I think we would all agree that five judges for a great appellate court is the best number that can be devised. Five admits of no decision except by three. Except on the constitutional cases that arise, I think the court might well enough consist of but five judges. How did there come to be nine? Was it ever made a court of nine judges as an appellate court? The increase in the number of judges of the Supreme Court was always the result of an increase in the number of circuits, and the nine circuits have made the number of judges nine; and but for the inconvenience of increasing their number as an appellate tribunal, long before this, instead of being nine circuits, there would have been fifteen. This idea of the preservation of the entire judicial force of the Supreme Court in its action on the ordinary cases that come before it, has kept down the increase of the circuits in number. But we have come to the point where we must determine whether it is an essential element of the constitution of the Supreme Court that its entire judicial force of nine judges should be applied to the hearing of ordinary and everyday causes. Does any lawyer think that a charter party, or a policy of insurance or a patent case, or a freight case, or a common carrier case needs to have that immense breadth of judicial

force applied to it which is included in the whole bench of nine judges, that are collected there not for that purpose and that idea, but because there are nine circuits?

We propose, by our method, to take hold of the subject where the pressure is, and, by an administrative measure that does not depart from any fundamental ideas of the Constitution, enable the Supreme Court to do its business. Is it constitutional? I agree not only that what is unconstitutional is impossible, but that any grave or serious question upon a matter respecting the Constitution should be carefully abstained from, whatever might be the final judgment about it. But, as I say, all the principles and ideas of the Constitution are maintained and observed by maintaining the supremacy of the Supreme Court, and by keeping it the single Court of Appeal in the country.

Is there, then, in this administration by sections or quorums that we propose, any departure from the unity of the court as a court, or its supremacy as a court of appeals? Manifestly none, unless you hold that under our government and Constitution, however large you may make that court, the judges must all sit for the hearing of private causes. You may need to have fifteen, or twenty-one, or even forty-five, for aught I know, if the smiles of Heaven are not withdrawn from us. Would you say that all that number must necessarily sit in such cases?

It has been my fortune sometimes to argue causes in the Supreme Court of the United States involving great questions of constitutional law or general jurisprudence; but the great number of cases, after all, that I have had to do with have been questions under statutory or common law, involving the rights of private parties; and it has always seemed to me that such cases could be effectually and satisfactorily disposed of, and ample justice done by a less number of judges than a full bench.

The presence of so many judges in the hearing of a cause tends to the responsibility or active administration of the particular cause being surrendered to one or two of the judges, the others preserving only an attitude of supervision and criticism. I would rather have three judges attending *ad idem*, and with the same measure of interest, to every discussion, than a larger number who, finding no necessary or proper occupation for so great a judicial force, leave the administration necessarily to the active responsibility and vigilant attention of some one or two of their number. There is no provision in the Constitution except there shall be one court. What is our plan?—that there shall be two? By no means. There is still one court, one docket. It is that there shall be a division into quorums, which shall hear, in separate rooms, causes in their order on the docket. Two quorums can, of course, dispose of twice as many cases as are now disposed of. The risk of independent judgments, that forms the basis of an objection to our scheme, is small. It is not like having tribunals sitting in different parts of the country, in which case there would be a great probability of diversity. These quorums would each be advised of the nature of the business coming before the other. One of the members of one quorum says to a judge of the other, "You had argued in your court that case of A *vs.* B." "Yes." "And we, that of C *vs.* D." "One is from Massachusetts, and one from New Orleans; but they both involve the same question of a charter party." "That is so." And before any decision is made, pronounced, or recorded, if there is a division, then it becomes a subject that the whole court is to hear, and one judgment is made applicable to both cases, before the diversity has escaped into public notice. But there is no such scheme or method as that, and can be none, in an establishment of courts in different parts of the country.

We observe, then, that the number of members of the court now employed in hearing private cases grows out of considerations entirely independent of the wisdom of having so many thus employed.

The only alternative, for a system of lesser quorums, is one that either deprives the citizen of an appeal, or deprives the Supreme Court of supervision. The quorum is within the power of Congress to establish. If there should arise circumstances requiring six out of the nine judges to be attending in their circuits for the hearing of causes of original jurisdiction, it would be entirely competent for Congress to say that three should be a quorum for the transaction of the business of appeals. It might limit that number to causes of private interest, as it certainly would. Does it, then, make a difference that three shall be sufficient for a quorum, and that it shall be the duty of the court to divide itself into three or into two quorums of four and five, that shall sit concurrently and take up cases in the order of the calendar? I have not been able to see the force of any constitutional objection to the scheme. Lawyers may find an objection to its substance, and then endeavor to fortify that objection by a doubt, for doubts can be bred on almost every subject; but it is a doubt without a reasonable foundation.

Now let me treat on what are the important elements in this alternative plan of the majority of the committee.

The spirit of the committee is very harmonious. Though differing in their judgment, they have desired to propose, as far as they could, a system that was adequate to furnish relief; and this alternative is substituted for the proposition which we have presented to the Association.

The proposition of the majority is that there shall be nine appellate courts, with geographical limits, and made up of members of inferior courts; that the decisions of these courts

shall be final, to the larger portion of litigants: \$10,000 must be the right of appeal to the Supreme Court of the United States. That amount must be involved before the litigant can get to the court of last resort. Ten thousand dollars, as we lawyers, talking of our clients' interests, use the phrase, rolls smoothly off the tongue; but it is an amount so large that it is all that the mass of our citizens, short of a few hundred thousand, ever expect to be worth in all their lives.

What becomes, then, of this judicial system of a free people, in drawing this line in the equality of justice between the rich and poor? What becomes of that great encomium upon the law as having its greatest attribute in this, that there was nothing above its power or beyond its control, nothing beneath its notice nor without its protection?

If your system requires you to strangle the rights of the people, to begin with, and our system does not disturb in the least any of the enjoyment of their rights whatever, it seems to me we have the stronger argument in our favor. If our scheme is adopted, it will be but a few years before the Supreme Court will be able to discharge its functions, not surrender them; the people will be able to have their litigation upon the old standard of \$2,000, instead of having their heritage further shortened by this larger amount of \$10,000.

I warn the Bar, and would warn judges, if judges would ever take warning, that the notion that this country has got so many merchant princes and railroad kings that they need to have the time of the Supreme Court saved for them and for the Constitution—for I agree we keep, by either plan, the Supreme Court for the Constitution; we do not allow the railroad magnates and merchant princes to crowd out the Constitution. But this notion, that they should claim almost exclusively the attention of the Supreme Court, is

an enormous mischief, an immeasurable evil. It is a fester and sore in the community to have one measure of justice for a great cause and another measure for a small.

The inability of suitors to press their claims or engage lawyers, the poor, or those in moderate circumstances, bear as a part of the incidents of their poverty; but they do not require it, as an additional incident to their poverty, that it should affect their relations with this great tribunal that the people reverence as a great popular institution, after all; for it is the guardian of the Constitution, which is the most popular institution of the people of this country. The presidency, the Congress, the courts, literature, science, art—all have admirers and worshipers and votaries; but, thank God, the Constitution of the people of this country stands to them as the greatest human institution that the world has ever seen.

As I have said, there is no obligation in government to give more than one day in court to all its citizens; but is it not its duty to give as many days in court to all its citizens as it gives to any? Do not think you have done your duty in providing for the prompt administration of justice by cutting off all recourse to that administration on the part of a great portion of your people.

The old system, providing for the presence of a Supreme Court judge as part of the Circuit Court, was intended, really, and operated to carry, so to speak, in this divided and divisible form, the wisdom and knowledge of the whole court; so that in the courts of first instance it should be felt by the suitor that, except in very debatable and difficult cases, he had had the wisdom of the Supreme Court brought into the original determination of his cause. If the unbending circumstances of our expansion would have justified a continuance of that system, we should not have heard of intermediate courts of appeal; but that was not possible.

That was an admirable system, but we have had an interception of the presence of the Supreme Court, by one of their members in our circuits by the creation of circuit judges, and by the extension of the term *in banc* at Washington, so as to give no time for circuit attendance. And you have, under the pressure of that necessity, cut under to a very undesirable extent the relations of the Supreme Court to the people, in the persons of associate judges of that court participating in the administration of justice all over the country. That you have done, and you have shut them up at Washington all the working part of the year. That being done, it is now proposed to the people of this country that the Supreme Court cannot administer the full appellate jurisdiction; that the citizens must have their appeal curtailed, and there must be a division of the appellate power; and the Supreme Court itself be removed another stage away from the people.

These measures, as we now debate them, present the question of whether the Supreme Court shall, by an administrative arrangement, be made able to dispose of its causes, or whether those causes shall partly be suppressed and partly decided by others.

I confess that while I can understand perfectly the difference of opinion among lawyers and among statesmen, I cannot understand why the Supreme Court itself, at Washington, should be thought to favor this great novelty, touching great interests no doubt, as I think in its pernicious results, as our learned friends think, in its beneficial results. So far as the Supreme Court itself is concerned, it seems to me to be nothing but a decree that its great inheritance shall be taken from it and given to another.

William Preston, of Kentucky, said:

Mr. President,—I have felt a deep interest in this Association, but have never yet taken any part in its debates. I am

in favor of the report of the majority instead of that of the minority, and at the request of my friend, Governor Stevenson, one of the committee, will say a few words in its support, as he is not quite well.

It is conceded by all that the great enlargement of the wealth and population of our country has created such an accumulation of business in the Supreme Court that some remedy is indispensable. The causes have increased from 50 or 60 every year in the earlier days of the government, to more than 1,200 cases every year, not one-third of which can be decided.

To remedy this evil, two plans have been proposed, one of which is contained in the report of the majority of the committee, and the other has been clearly and admirably stated and advocated by the gentleman from Vermont and the gentleman from New York.

The chief objections urged against these reports are that they are in violation of the Constitution; but I confess I cannot see that either plan is obnoxious to the charge made.

This matter originated with this Association, and has occupied it for some time. A committee composed of nine members was appointed, and visited Washington to secure appropriate legislation. It was composed of our ablest and most distinguished members, and the Senate of the United States passed a bill embodying the report of the majority of our own committee. Would it not now seem captious for us, without some very grave objection, to reject our own plan? We are only a private association of gentlemen, a Bar Association, suggesting a plan of relief for a great public evil. If we put ourselves in opposition to a bill recommended by our own committee, and approved by the Senate, might it not lead to delay, at least, and endanger all relief? In short, would the House pass the pending bill, or Congress enact any statute affording a remedy? Any

failure to act on the bill at the next session would imperil its passage and probably postpone all relief. I therefore think it is safest to stand by the report of the majority.

The gentleman from New York has presented with eloquence the objections that the plan proposed in the report of the majority might impair that unity in the exercise of its appellate jurisdiction which is vested by the Constitution in the Supreme Court; but I must confess that the apprehension appears to me to be unfounded. The jurisdiction vested in that court is extraordinary. In its original jurisdiction, it is above the power of Congress, but in its appellate jurisdiction is subordinate to the legislative department. The original jurisdiction over sovereign states and ambassadors is unknown to the English courts. The original jurisdiction of the Supreme Court regulates our inter-state relations, and probably owes its origin to the Druidical customs, as shown by Cæsar, in deciding inter-tribal disputes. During our colonial period, all inter-colonial questions of a public character were vested in the King and Council, and when we framed the Constitution, this public jurisdiction of sovereign dignity was vested exclusively in the Supreme Court. But as to civil causes affecting private rights, the jurisdiction is within the courts created by Congress, and process and appeal are entirely within its discretion. The Judiciary Act of 1789, and the subsequent acts, all fix and regulate sums upon which appeals can be heard, and the people have reposed that power exclusively in Congress.

The gentleman from New York has painted in brilliant colors the advantage of unity in the exercise of the appellate jurisdiction of the Supreme Court; but it does not strike me that this unity of jurisdiction is at all violated by the plan of the majority report. If it be necessary to resort to metaphor, that jurisdiction may be likened to the Koh-i-noor, the great diamond that adorns the crown of England. If

the gem be uncut or obscured by incrustations it is not sacrilegious to cut and polish it, nor should we, who have one idea about the mode, be thought Western savages who, with our tomahawk, would dash it into fragments, ignorant of its greater united value. No one wishes to do that. But it seems to me that we are rather like wrangling lapidaries, disputing as to how the jewel was to be cut and the facets polished so as to give the greatest light.

In conclusion, I will again say that we are merely an association of gentlemen, representing to a certain degree the American Bar. We have appointed our own committee, and they have reported a plan for our adoption. The Senate of the United States has approved their plan, and it has passed that body in the shape of a bill, now before the House of Representatives. Now, ought we not to go on with the work? Is it not better than, on matters of detail, to contrive another plan, or reiterate rejected propositions? Would it not impeach the intelligence of the Senate to maintain that the bill passed by that body, at the instance of a majority of our own committee, is unconstitutional? Why should this Association, in this grave matter, present a divided front? For my own part, I think we will not do so, and that the present Senate bill will become a law.

Entertaining these views, in my judgment it is best to adhere to the plan of the majority.

Charles S. Bradley, of Rhode Island, said:

Mr. President,—As a member of the committee, I think ten minutes will suffice for all I wish to offer to the judgment of this Association in regard to this matter.

It is now more than fifty years since I learned to listen with delight and admiration to anything that he whom the boys called "Evarts," might choose to say. As I look upon him now, I see a brow untouched by its threescore years; and as I hear him propound and repeat the main principle

of his elaborate discourse—his idea of the duty of a court in its relation to the citizen—I seem to myself to hear youthful power and ambition seeking to change most materially all our judicial system. While the chief purpose of civil society is to protect man in his endeavors to live according to the laws of his being, and the judiciary is the main agent of society in giving that protection, our wise friend gravely propounds as the leading idea of his discourse, with which it begins and ends, that one day in court, one hearing, is all that the citizen may rightfully ask from tribunals charged with the great function of determining the right and giving him protection. I appeal from this exalted opinion to the experience of all time and all tribunals and to the judgment of all members of our profession. With one voice they now and always have declared that to secure right results, an opportunity for the review of a first opinion, an opportunity for a sober second thought, in law (as in all things else) is essential to that measure of justice, of perfect protection, which human tribunals can give. If the foundation of the elaborate argument, to which we have listened with such pleasure, fail when tested by the wisdom of experience, the argument itself and its conclusion must come to the ground.

It is the right of the citizen litigant in the courts of the United States to have the possible errors of a single district or circuit judge corrected. The appeal or rehearing is to secure that right, and not, as Mr. Evarts argues, merely to secure uniformity in the law, though the latter results as a consequence of the right.

We have a plain, practical question before us, and but a few minutes to consider it.

What is the resolution offered by the majority? Their proposition is "that the undersigned have, therefore, reached the conclusion that the general scheme for the relief of the

Federal judiciary, which proposes the establishment of intermediate courts of appeal in the several circuits, is that which promises the largest measure of success."

That is our conclusion and recommendation; it is upon that we ask the judgment of the Association.

On the other side, it is proposed that there shall be several courts, or perhaps they would prefer that I should say several bodies of men in Washington having equal and co-ordinate power to hear and dispose of judicial questions.

The point of difference, then, simply is this: Here is a certain amount of judicial business to be performed by proper tribunals existing in the circuits, or by tribunals existing in Washington. Which shall it be? is the only question here. Other things being equal, the tribunal which brings the administration of justice nearest to the people will be more acceptable than that which requires a journey of thousands of miles to Washington to adjust their controversies. If the adoption of the proposed method will dispense with that difficulty, it is an immense gain in and of itself.

That was the idea of the founders of our judiciary. They sent a member of the Supreme Court to the circuits, intending in that way to diffuse the Supreme Court through the country, and not concentrate it solely at Washington. The people were contented with the judgments of such men as came to them from Washington, and rarely went beyond them to the full bench.

Judicial tribunals should command the respect of the profession and of the people. Professor Phelps treats lightly the possibility of having good courts in the circuits, composed, he says, of such men as it may please Providence and the President to give us. Is it not identically the same Providence and the same President who have given us the many eminent judges of the Supreme Court, and who will give us our judges at Washington and in the circuits?

When I listened yesterday to the eloquent discourse upon that grand old lawyer Petigru, and learned that he would not go from home to Washington, I remembered that Judge Curtis once said to me, "I wish I could stay at home, and never go to Washington." And there are other men who would prefer to have themselves and their families in the safe anchorage of home rather than among the shifting sands of Washington society.

Competent tribunals in the circuits will diminish appeals to Washington. The minority plan strikes at the superficial difficulty; the majority plan at the original and radical one, and the measure that we propose is directly in harmony with the Judiciary Act of 1789 and the successful experience of the past.

There is another practical consideration of some moment. We have no power of action. We are only challenging the judgment of the country. Last year, when this matter was before the Association, a cautious advance in any action this body might take was urged. The plan then proposed has been abandoned by all. Then we had our late President, Mr. Potter, with us. I will not invoke the presence of the dead, yet I cannot allude to him without saying that I have rarely met a man whose power—physical, moral, and mental—gave such earnest of a long and high career. He was of our committee, and had he been spared to us, I do not think there would have been any discussion here. As it is, there is a difference of opinion, and we have two methods before us. The plan of the majority, substantially, is the same as that adopted by the Senate; and we are informed by Mr. Evarts that the Supreme Court of the United States (who are presumed to know something of the requirements of the case, and to be capable of clear judgment concerning it), have also disapproved any plan like that of the minority.

Is it worth while, upon this practical question, to fly in the face of the Senate and Supreme Court? The bill may be carried through the House, which has gone through the Senate by a majority of nearly two to one, and not a single senator offered the minority plan as an amendment. No other bill of different character can be carried through both houses during the next short session, and after that we are launched upon a presidential campaign, and nothing will be done in respect to this matter.

With the details of the bill we have nothing to do; all we can do is to express ourselves in harmony with its general plan. As to its constitutionality, there is no question. On the other hand, I believe the other plan to be unconstitutional. Men divided into three sections, each having co-ordinate power, each having all the functions of a court to hear, decide, determine, and carry into execution causes brought before them, are in reality three different courts. Call them quorums or what you will, they are separate and distinct bodies. This idea of three in one, and one in three, is something that pertains only to the mystery of Divinity, and not to the practical affairs of our human life.

The minority plan gives us three Supreme Courts instead of the "one Supreme Court" provided by the Constitution.

It is proposed to remedy this obvious difficulty by saying that after a committee or quorum shall have heard a cause, it should then be submitted to the body of the court, and judgment be rendered by the whole bench.'

The full bench, in such a case, is no court at all. All of us know that judicial tribunals have three sets of officers—one to prepare and present a cause; another to hear and decide it; a third to carry the decision into execution. In the proposed plan of the minority, those who prepare and present the cause never appear before those who adjudicate it; and those who decide, never hear the cause, in any

judicial sense of that word. They take the report from a part of their own body, of the argument on either side, and of the truth of the cause. This may be a commission; it is not a court. A body of men cannot render a judicial judgment upon a matter which it has not heard. Is the American Bar Association gravely to recommend a measure which would authorize a body of men called judges to decide a case without ever having heard the argument of the counsel or of the parties interested? The judicial trust and duty cannot thus be delegated. It may be resigned. Such a proceeding would be an abdication which, with appropriate consequences, should become a removal from office. Of all men on the face of the earth, I submit that you, gentlemen of the American Bar, should be the last who ought to be expected to sanction such a measure. It is as essential that the Bar should vindicate the rights of the citizens, as it is that the court should adjudicate them; and a body which does not hear as well as adjudicate, is not a court.

I will not take up your time longer. I submit our recommendation to the judgment of the Association.

A. Q. Keasbey, of New Jersey, said:

I do not intend, Mr. President, to engage in this discussion, nor to occupy the ten minutes allotted to me. I have endeavored in this matter to put myself in the position of the conscientious jurymen, listening to the arguments of counsel, and preparing himself to render a verdict at the close of the argument. I only desire to make a few suggestions in regard to the constitutional point.

The Constitution of New Jersey provides that there shall be one Supreme Court. In 1845 the Supreme Court of that state consisted of five judges. It had become so over-burdened with business, that some relief was imperatively demanded. The legislature in 1845 provided that the Supreme Court

might designate, at the beginning of each term, one or more of its members to sit in a separate apartment, and hear and decide such questions as might be submitted to them; and that the decisions of such judges should be as good and effectual as those of the full Supreme Court.

This continued for ten years, when the question was raised as to the constitutionality of that method, and it was decided to be no infringement of the Constitution of that state.

Our court now consists of as many judges as the Supreme Court of the United States. It is divided into main and branch courts. Four members sit as the main court, to hear all the more important causes; three sit as a branch court, hearing other matters; and very often the two remaining judges are engaged hearing causes by agreement among counsel or parties.

The opinions of these departments are not rendered on the spot, except in such perfunctory matters as can be decided instantly. The opinions of these branches of the court are the opinions of the court; they are discussed by the court and promulgated as the judgment of the court. We regard their decisions as the voice and judgment of the entire court, and it is so regarded by the profession at large in New Jersey.

John L. T. Sneed, of Tennessee, said:

Mr. President,—I have been greatly instructed and entertained by this discussion.

There can be no doubt this is the most important question that can engage the attention of the Bar of the United States, and I desire to offer a few remarks on behalf of the Bar of Tennessee.

It is always perilous to undertake to unsettle an old system; and yet, when the cardinals in the Vatican at Rome, many years ago, were protesting with Pio Nono against some concessions to the popular demand of the people, the old

Pope remarked, "Sirs, it is true that this papal establishment is a very old and very venerable fabric, but it is only old buildings that require new foundations."

In the discourse delivered this morning by my friend from Ohio (Mr. Jordan), he mentioned the name of Sir Matthew Hale. It is said of that illustrious man that he had engraved upon the head of his cane the motto, "*festina lente*," lest even he, in his old age and ripened experience, might go too fast. Let us "go slowly" in this matter. And yet something must be done. There are twelve hundred cases on the docket of the United States Supreme Court. They can only dispose of about three hundred and sixty per annum, while the cases are increasing at the rate of four hundred and twenty per annum. That, Mr. President, is a startling record, and amounts almost to a denial of justice to the American people, each one of whom is entitled to a speedy trial without denial or delay.

You talk about the matter of expense. Let any politician come before the people with such a record as this, and tell them that, on account of the expense, the courts are closed against them—that *Magna Charta* is violated wherein it provides that all courts shall be open to the people. What would be the result of such a statement? The people would laugh him from the hustings, and tell him, if necessary, to correct so gigantic a wrong,—that a million, or thirty millions of money from the treasury would be but a small allowance to secure such an end. Where does the money come from but from the pockets of the people? And they would never begrudge its application in the direction of the equal and impartial administration of justice.

The Constitution of the United States provides for "one Supreme Court." It is so proclaimed in the organic law: one august, indivisible court, to sit and deliberate upon the rights of men and of commonwealths. That is the kind of

court our fathers created, and I, for one, as a citizen of this country, would feel humiliated if I were to see that august tribunal dissolved into divisions or into subdivisions, into sections, into "side shows," that Peter and Paul might carry on their little cases *pari passu*. That is not the true spirit and intent of your organic law. Do not gentlemen present know that when circuit duties were imposed upon the judges of the Supreme Court, that Chief Justice Marshall said it was a violation of the Constitution? Do you not know that Roger B. Taney said the same thing? But because their labors on the bench were then light, Marshall acquiesced in the proposition because he thought the people desired it; and having so acquiesced, Taney and his great compeers agreed to it also. What would those great men think of the disintegration of that tribunal, now proposed in the minority report?

Suppose you now divide that august tribunal into two sections. To be evenly divided, you must have four in each division. What are you going to do with the odd man—the ninth? Who does he belong to? Both divisions will claim him, undoubtedly, because the section having five are more likely to decide their causes than that having only four, with the possibility of a "deadlock" in their decisions. What will you do with the fifth man? Will you divide him, and settle the question as Solomon proposed to do in that celebrated *habeas corpus* case about the baby, and give a half of him to each division? Such a scheme, to put the most respectable face upon it, is ridiculous; and yet I say it with the most profound respect for the gentlemen who advocate the other side, for I know their earnest desire is to uphold the Constitution as it should be upheld.

The plan of the majority has engaged the attention not only of the distinguished President of the Senate of the United States, but of the judges of the Supreme Court; and I am in favor of that plan, believing it to be the best offered.

It has been said that those in favor of that measure are seeking official positions that will be created by the Davis bill; but, for my own part, I want it understood by the learned gentleman who made the suggestion last night, that I belong to a party that stands, like Cæsar's wife, above suspicion on that score.

E. B. Sherman, of Illinois, said:

Mr. President,—It would not become me to advert to the constitutional argument which has been made by one who is the legitimate successor of the great expounder of the Constitution, and whose fame and character are not only established in this country, but wherever civilization has gone. I beg, nevertheless, to call the attention of the Association to but one proposition: that if the logic of the gentlemen from New York and Vermont (Messrs. Evarts and Phelps) is carried to its ultimate results, and the Supreme Court is to be divided, why may it not be divided into nine portions, each man constituting a quorum? If the court may be subdivided into quorums of three, why not into nine sections? To my mind there is as much propriety in saying that one judge shall be a quorum, and as such constitute the Supreme Court, as that three shall.

A single word as to the practical question raised by my distinguished friend, at whose feet I learned the first rudiments of law—the gentleman from Vermont (Mr. Phelps). He asserts that these local courts will not be respected by the people; and, in an unguarded moment, without weighing well his words, he said that these new judges would be like a militia drafted into the service. Think of the court sitting in New York circuit, with the honorable and eminent Judge Blatchford at its head, and composed of such men as Judge Benedict and Judge Nelson and others, being compared to a “militia” drafted into the service! Judge Blatchford has been “drafted” into the Supreme Court, and Judge Gray,

not even a militiaman, has been "drafted" into the same eminent body. That argument was hardly worthy of the gentleman, and I can only think he made the remark in an unguarded moment. But to refute that, let me refer for a moment to the argument of the gentleman from New York (Mr. Evarts). He maintains that these nine circuit bodies, composed as they will be, will be so strong, so vigorous, so eminent that the institution will endanger the liberties of the people. I pass over to the gentleman from New York the overwhelming argument of the gentleman from Vermont; they may each refute the other.

But what is the fact? Simply this, Mr. President, that these tribunals would be composed of eminent judges, whose interpretations of law and the expositions of jurisprudence would be so weighty that the only danger to the Supreme Court would be that these courts might rival that eminent body in the esteem, respect, and confidence of the American people; and that is not a very serious crisis to apprehend. It will be a poor man's court. I invoke in favor of this majority report every one of the eloquent utterances of the gentleman from New York. The provisions of this bill will afford ample justice for the lowest as well as the highest.

The gentleman from New York says that this country will be divided up into sections; that we shall have rival tribunals and conflicting decisions. In my own state, where the appellate court was created while I was a member of the legislative body, and chairman of the committee reporting in favor of the measure, all these evils were predicted of the system. These arguments against the intermediate court system are familiar to us in Illinois, but they have proved groundless.

The value of a court of last resort, and especially the court of last resort of the greatest nation upon the face of the earth, is in an inverse ratio to the number of cases it decides. Its function is to pronounce the law, that the inferior

courts, the bar, and the people may know what the law is. That function can be best subserved by reducing to the minimum the number of cases it shall decide, so that the judgments of that court shall remind us again of the times when Marshall, Taney, and Story adorned the Supreme Bench.

A. Q. Keasbey, of New Jersey :

Mr. President,—With reference to what the last speaker said about one judge being a quorum, I merely want to say that in New Jersey it often happens that one judge of the Supreme Court hears and decides a case.

C. Stuart Patterson, of Pennsylvania, said :

Mr. President,—I do not intend to discuss the constitutional question. I simply desire to put, in a few words, some practical reasons for the approval by this Association of the Davis bill.

It is objected that an increase of the appealable limit to \$10,000 will cause a discrimination between the rich litigant and the poor. We would probably all agree that the money element should not govern the matter of appeal at all. Probably the most scientific appellate system is that by which appeals from colonial courts to the Privy Council in England were formerly regulated. Under that system appeals, without regard to the amount in controversy, were allowed, where, either the court of the first instance would certify that there was a question for appeal, or where, after the refusal of that court to so certify, the appellate court would, upon an inspection of the record, allow the appeal. By that method, there was full opportunity of reviewing all properly appealable questions, and yet the time of the appellate tribunal was not needlessly wasted in the hearing of cases that were so clearly governed by authority as not to involve a fairly arguable question. But in this country the pecuniary limit has been so long regarded as the most

convenient test of the right to appeal, that it cannot now be seriously expected that it will be disregarded.

In 1789, Congress fixed the limit of appeal at \$2,000. In 1872 the limit was raised to \$5,000. It is now proposed to raise it to \$10,000. If we contrast the present condition of the country with its condition in 1789, we shall, I think, come to the conclusion that \$10,000 at this time is a much smaller limit than \$2,000 at that time. In 1789 the Chief Justice of the United States received \$1,800 per annum, and the President \$4,000; the latter now receives \$50,000, and the Chief Justice \$10,000. That is an illustration that shows the difference in the relative values of the amounts.

Are the cases whose amounts in controversy are more than \$5,000 and less than \$10,000, so much more important? Do they so universally involve questions of greater complication and difficulty, that the proposed increase to \$10,000 is to be regarded as a sufficient reason for rejecting the relief which the Davis bill offers? To state the question is to answer it.

We, who meet here, have no legislative authority to determine what is the best possible plan for administering the judicial business of the United States. We are here representing the Bar of the United States. Our voice will have no greater weight than that which it will derive from the soundness of the reasoning by which our conclusions can be supported. We are not theorists. We are practical men. We want that legislation which will give us the most certain and speedy relief from an existing and increasing evil.

Day after day the dockets are becoming more and more crowded, both in the Supreme and Circuit courts; there must be an increase in the judicial force in the circuits; relief must be applied there as well as in the Supreme Court. Is not that plan the best and most practical which enables us at once to meet both difficulties? Such a plan is that

embraced in the Davis bill, which has already passed the Senate of the United States, and received the approval of the judges of the Supreme Court, of many lawyers throughout the country, of many members of this Association, and of a majority of our committee. That bill can be passed in the House at the next session, if there is an united expression of public opinion in its support. If that bill be not passed, is there any reason to suppose any other relief will, within any reasonable time, be given to us? I submit that for these reasons the report of the majority of the committee ought to be sustained.

Edward O. Hinkley, of Maryland, said :

Mr. President,—Ten minutes will not suffice to display much eloquence, however pleasant it might be to an audience even of lawyers. But five minutes will suffice for me to suggest that there was a Supreme Court in ancient times that got into the same difficulty as that in which the United States Supreme Court now finds itself.

In the history of the oldest nation of whom we have any record, it is told that they had a supreme judge, and he had so much business on his hands that his father-in-law told him that what he was doing was not good, as he would wear himself out, and wear out the people also. So Jethro said to Moses that he should appoint subordinate courts—judges of thousands, judges of hundreds, and judges of fifties, and judges of tens to hear the small matters, while he (Moses) heard all the great matters.

That is the case I wished to refer to, Mr. President ; and if the case means anything—if there is any principle to be adduced from it—I think it means precisely what the Constitution of the United States declares. I think it declares only what is an inevitable necessity, what is inherent in the nature of things, when it says that there shall be one body or court called supreme. But there ought to be an

intermediate tribunal; and you cannot produce such a tribunal by dividing the supreme tribunal into three. How can an integer preserve its integrity after a division? I cannot see how it may be done; there is a want of logic in it. There is in it a want of analogy to all things in nature and in the inferior and subordinate occupations of man. Time will not suffice to state the analogy, except to place nine directors of a corporation, four of whom should constitute a quorum; and to place the other five in another room, and call them also a quorum. The thing would be illogical. And even if constitutional, there are inherent objections that are paramount to any supposed convenience that might arise by a division of the labor.

What shall I do if I cannot transact all the work to be done by me? I will appoint subordinates. The fundamental error of the other side is in supposing that the nine men at Washington are better men than we have in the circuit and district courts. Yet men who have served ten, fifteen, or twenty years in their duties in the courts of first instance are sometimes far superior to the appellate tribunals. The only difficulty I see about it is that the judgment of one man sitting alone, as he himself would doubtless acknowledge, is not so reliable as a larger number, from the principle that "in the multitude of counselors there is safety." And to be enabled to settle the question as he himself would like to have it settled, he would be glad to have three or five men review his decision. It seems to me that the system of intermediate courts is the best method that can be adopted.

Nathaniel W. Ladd, of Massachusetts, said:

Mr. President,—I am opposed to the system of intermediate courts, because I believe that if there is to be an increase in the Federal judiciary, it should not be an increase in that direction, but an increase in the other direction.

We are all agreed no doubt, that a national bankrupt law is a necessity. One of the difficulties in the way of such a law is, that these courts cannot get near enough to the people to deal with the matters pertaining to a national bankrupt law.

The judges composing those courts should be of men of as much ability as in the Supreme Court.

If you are going to have an appellate court lower than the Supreme Court, why not give appellate jurisdiction to the Circuit Court, and create a lower court if it be necessary, and increase the judiciary in that respect, so that they might deal with the minor questions of a national bankruptcy law, which we must ultimately have. The less important cases might be disposed of by the inferior courts, reserving the more important questions for the Supreme Court as it now exists, but sitting in quorums. Congress may provide that any number of justices of the Supreme Court may form a quorum. If the extent of the appellate business be so great as to warrant it, increase the number of Supreme Court judges, and divide their number up into "sessions." They might take the docket and make a division of the labor, part going to the first session, part to the second session, etc. If this plan is carried out, the accumulation of cases would soon be reduced, and in my estimation, it is a better and more constitutional method than establishing another court, in many instances a "supreme court," from which there will be no appeal.

Henry Hitchcock, of Missouri, said (in substance):

Mr. President,—The time I may occupy in exercise of the privilege of answering must be limited, for it is late. I shall not, therefore, attempt to discuss at length the arguments made on the other side.

Judge Bradley has called your attention clearly to the scope of the report presented by the majority of your com-

mittee, which was that they had come to the conclusion that the general plan for relieving the Federal courts by the establishment of intermediate courts was the one which promised the largest measure of success. That is all the proposition we make in our report.

The bill which has passed the Senate now goes to the House. If found desirable, it can be amended there in accordance with some of the suggestions that have been made here. Criticisms of that kind may be submitted to the members of the House and availed of there; we have nothing to do with that. The real question here is as to whether or not the majority are right in suggesting their plan as the most feasible. Doubt, upon a matter so grave, is equivalent to condemnation; and there is a doubt upon the minority scheme. As to the constitutional question, I shall not further discuss it. The crucial point—the cardinal proposition put forth by the majority report on that head—has not been answered.

The question has been asked in argument: Does it make any difference what the balance of the judges are doing while a quorum is hearing cases? It does, I answer, if they are doing what the Constitution says shall not be done. They may be sent on circuit duty; assigned to this, that, or the other circuit. But when Congress undertakes to say, if it ever shall, that those other members of the Supreme Bench shall be authorized to sit, performing the functions of a court, then Congress is doing what the Constitution forbids. An integer cannot be divided and remain integrate; nor can a triumvirate be called a monarchy. I have heard of animals, the separate fragments or parts of which could, after being divided, each still performed the functions of the whole; but I believe that characteristic is restricted to the very lowest forms of animal life.

Judge Bradley has alluded to the folly of supposing the

opinion in a cause heard and decided by a few, to be equivalent to that of the whole court, the majority of whom would thereby be rendering an opinion upon a case they had not heard.

Instead of asking the Supreme Court to hear a case once, you are, by this minority report, providing for their hearing many cases twice. Such a plan will require more time to transact the business than is even now devoted to it.

But even with a court divided as is proposed, it would not be equal to the growing demands of the increasing business of this country. The measure they propose would only afford temporary relief, while we think the establishment of intermediate courts will bring permanent relief.

With regard to what has been said about no appeal to the Supreme Court being allowed under our method, unless the amount of \$10,000 was involved, gentlemen surely must have forgotten that I called attention to the provisions of the Davis plan, which by no means provides that there shall be no appeal to the Supreme Court unless \$10,000 is in controversy. On the contrary, it provides for appeals without reference to the amount involved, whenever the questions of law involved are of general importance, and also in other classes of cases specified,—thus not raising, but in reality lowering the present limit; so that the argument about rich men's courts and poor men's courts has no application.

I regretted to hear an argument which raises a supposed distinction of class, based upon the possession of wealth. Such an argument is a fire-brand, even when the facts might seem to support it; but, as I said, it is not applicable here, for instead of shutting out the poor suitor, we afford him more ample facility of appeal. The best answer to the argument made by the other side in that respect is simply to recall the actual provisions of the Davis bill.

The time has arrived for the vote to be taken, and I propose we now vote upon the question.

(Several members: Question! question!)

Mr. Evarts:

I rise to ask the gentleman a question: Am I to understand that all cases that come before the intermediate courts will, as a matter of right, go to the *Suprême Court*, and that there will be no pecuniary limit above \$500?

Mr. Hitchcock:

The statement is in the bill itself, giving the restrictions. In several classes of cases there are no restrictions of appeal. I will read it.

Mr. Evarts:

You can answer my question whether your report favors a system of intermediate courts from whose decisions, as a matter of right, there shall be an appeal or reconsideration, unaffected by any amount involved.

Mr. Hitchcock:

No, sir; not as you now state it.

Mr. Evarts:

We should not take the vote of this body upon an uncertain presentation. If you mean to have an intermediate system of appellate courts, making this another step through which all cases may go without a distinction as to amounts, then you are crippling and misappropriating the appellate power. If, on the other hand, you allow a universal appeal, then you are multiplying the steps and expense of an appeal, and enlarging the business in the Supreme Court instead of reducing it.

Our proposition is that we will enable the Supreme Court to do more business than it now does; your system will result in bringing more business, without furnishing the means to transact it.

Mr. Hitchcock :

We recommend that a pecuniary limit be fixed, below which there shall be no appeal, unless the question involved is of such importance that the Supreme Court should pass upon it.

Mr. Evarts :

Then, as a matter of *right*, you do not give a man an appeal unless he has a case involving \$10,000.

The President :

The first question is upon the motion of the gentleman from New York, to amend the resolution of Mr. Hitchcock by striking out the word "majority," and inserting in lieu thereof the word "minority." Those in favor of the amendment will vote Aye ; those opposed, No.

A *viva voce* vote was then taken, and the Chair being in doubt as to the result, a rising vote was demanded, which resulted—

For the amendment, 23 ; opposed, 42.

The President :

The question is now upon the adoption of the resolution of the gentleman from Missouri, and a count is called for.

The result was—

For the adoption of the resolution, 39 ; opposed, 27.

And the resolution was adopted.

E. B. Sherman, of Illinois, offered the following resolutions :

Resolved, That the criminal laws of the United States and of the several states do not sufficiently distinguish and punish persons committing crime as a business, and that provision should be made for the permanent confinement of those who so engage in crime as an occupation or pursuit.

Resolved, That the Committee on Jurisprudence and Law Reform be requested to consider and report a proper method

and criterion for discriminating between professional and non-professional criminals, and for the protection of society against the former, when so ascertained.

These resolutions were adopted, and the matter referred to the committee therein named.

Simeon E. Baldwin, of Connecticut, moved that the Association now adjourn *sine die*.

Seconded by Henry Hitchcock, of Missouri.

The meeting then adjourned without date.

EDWARD OTIS HINKLEY,

Secretary.

REPORT

OF THE

TREASURER.

Dr.

To balance from last account,	\$1,286 47
To cash received from dues of members,	2,465 00
	\$3,751 47

Cr.

1881.	By cash paid Postage, notices of fourth meeting,	\$24 50
Aug. 17.	Printing notices and file,	1 70
	Postage,	10 00
	Incidental expenses of annual dinner,	5 25
Aug. 19.	Clerk to Exec. Com.,	20 60
	Telegram to Secretary Blaine,	3 01
	Stationery for fourth meeting,	4 52
Aug. 21.	Expressage,	2 90
	Printing for fourth meeting,	12 00
	Janitor of Music Hall,	10 00
	Expressage,	90
	Cable to "Field" Int. Law Association,	20 72
	Expressage, boxing, etc.,	5 10
Sept. 5.	Grand Union Hotel, dinner,	575 00
Sept. 10.	J. H. Mimms, stenographer,	76 85
	Amounts carried forward,	\$773 05
		\$3,751 47

1881.	Amounts brought forward,	\$773 05	\$3,751 47
Sept. 10.	Expressage, etc.,	1 50	
Sept. 21.	Postage, etc.,	9 60	
	Music Hall, rent,	90 00	
Sept. 24.	Lock, letter-book, etc.,	1 75	
Oct. 1.	Telegrams, postage, etc.,	2 60	
Oct. 10.	"	1 30	
Oct. 13.	"	1 24	
Oct. 14.	"	1 94	
Oct. 15.	"	56	
Oct. 20.	"	52	
Nov. 10.	Postage,	5 00	
Dec. 8.	"	9 00	

1882.			
Jan. 6.	Printing,	30 82	
	Printing 2,000 volumes of Fourth Annual Report,	841 98	
	Postage, etc., on same,	102 84	
	Clerical services in mailing, etc., Reports,	50 00	
Mar. 17.	Postage,	30 00	
April 17.	"	5 00	
April 26.	Receipt-book,	6 00	
May 10.	Printing,	2 25	
	Binding book,	75	
May 13.	Clerk to Treasurer, on acc.,	71 00	
May 15.	Check-book,	1 02	
June 14.	Postage, notice of fourth meeting,	45 00	
June 21.	Printing circulars,	1 00	
June 22.	E. J. Phelps, printing Minority Report of the Supreme Court Com.,	154 68	
July 6.	Printing,	11 75	
July 20.	Postage,	6 00	
Aug. 1.	Secretary's bill of expenses,	8 17	
Aug. 4.	Printing,	3 50	
Aug. 5.	Clerk to Treasurer, in full,	24 00	
	Amounts carried forward,	\$2,293 82	\$3,751 47

TREASURER'S REPORT.

105

1882.	Amounts brought forward,	\$2,293 82	\$3,751 47
Aug. 5.	Henry Hitchcock, expenses printing, etc., of majority of Supreme Court Com., .	114 70	
	Telegrams,	80	
			2,409 32
	Balance on hand,		\$1,342 15
	Which consists of—		
	Cash deposited to credit of Treasurer, Commonwealth		
	Nat. Bank,	\$1,340 62	
	Cash in hand,	1 53	
			\$1,342 15

Respectfully submitted,

FRANCIS RAWLE,

Treasurer.

Audited and found correct.

T. N. WAUL,

NORMAN PAUL,

Auditing Committee.

SARATOGA, August 9, 1882.

LIST OF NEW MEMBERS.

ARKANSAS.

DU VAL, BEN. T., Fort Smith.

CONNECTICUT.

INGERSOLL, COLIN M., New Haven.
PERRY, JOHN H., Southport.

GEORGIA.

ADAMS, SAMUEL B., Savannah.
BARROW, POPE, Athens.
BILLUPS, JOEL A., Macon.
DESSAU, WASHINGTON, Macon.
FALLIGANT, ROBERT, Savannah.
GLENN, HOWELL C., Atlanta.
HALL, SAMUEL, Macon.
HARRIS, N. E., Macon.
HILL, WALTER B., Macon.
MACKALL, WILLIAM W., JR., Savannah.
RUTHERFORD, JOHN C., Macon.

ILLINOIS.

BONNEY, C. C., Chicago.
DUNHAM, CHARLES, Geneseo.
ROBERTS, R. BIDDLE, Chicago.
SHERMAN, E. B., Chicago.
WATERMAN, A. N., Chicago.

KANSAS.

STILLWELL, L., Osage Mission.

KENTUCKY.

BRYAN, JAMES W., Covington.
HALLAM, THEODORE F., Covington.

LOUISIANA.

BRICE, A. G.,	.	.	.	.	New Orleans.
LAZARUS, H. L.,	.	.	.	.	New Orleans.
McCALEB, E. HOWARD,	.	.	.	.	New Orleans.
MILLER, H. C.,	.	.	.	.	New Orleans.
PARDEE, DON A.,	.	.	.	.	New Orleans.

MAINE.

HASKELL, THOMAS H.,	.	.	.	.	Portland.
LIBBY, CHARLES F.,	.	.	.	.	Portland.
VARNEY, JOHN,	.	.	.	.	Bangor.
WOODWARD, CHARLES F.,	.	.	.	.	Bangor.

MARYLAND.

ROBERTSON, A. H.,	.	.	.	.	Baltimore.
WEST, CHARLES N.,	.	.	.	.	Baltimore.

MASSACHUSETTS.

DICKINSON, M. F., JR.,	.	.	.	.	Boston.
LONG, JOHN D.,	.	.	.	.	Boston.
MYERS, JAMES J.,	.	.	.	.	Boston.
PUTNAM, H. W.,	.	.	.	.	Boston.
WARNER, JOSEPH B.,	.	.	.	.	Boston.

MICHIGAN.

DICKINSON, DON M.,	.	.	.	.	Detroit.
DUFFIELD, HENRY M.,	.	.	.	.	Detroit.
GRIFFIN, LEVI T.,	.	.	.	.	Detroit.
KENT, CHARLES A.,	.	.	.	.	Detroit.
LOTHROP, GEORGE V. N.,	.	.	.	.	Detroit.
POND, ASHLEY,	.	.	.	.	Detroit.
ROMEYN, THEODORE,	.	.	.	.	Detroit.
RUSSELL, ALFRED,	.	.	.	.	Detroit.
TOMS, ROBERT P.,	.	.	.	.	Detroit.

MINNESOTA.

BENTON, REUBEN C.,	.	.	.	.	Minneapolis.
BERRY, CHARLES H.,	.	.	.	.	Winona.
CLARK, GREENLEAF,	.	.	.	.	St. Paul.
COLE, GORDON E.,	.	.	.	.	Faribault.
COLLINS, L. C.,	.	.	.	.	St. Cloud.
DESTY, ROBERT,	.	.	.	.	St. Paul.

MINNESOTA—Continued.

ENSIGN, JOSIAH D.,	.	.	.	Duluth.
EUSTIS, WM. H.,	.	.	.	Minneapolis.
GOULD, O. B.,	.	.	.	Winona.
HAHN, WM. J.,	.	.	.	Minneapolis.
LEVI, ALBERT L.,	.	.	.	Minneapolis.
LOVELY, JOHN A.,	.	.	.	Albert Lea.
MARSH, FAYETTE,	.	.	.	Stillwater.
O'BRIEN, CHRISTOPHER D.,	.	.	.	St. Paul.
OTIS, CHARLES E.,	.	.	.	St. Paul.
SANBORN, JOHN B.,	.	.	.	St. Paul.
SANBORN, WALTER H.,	.	.	.	St. Paul.
SEARLES, JASPER N.,	.	.	.	Stillwater.
WILLISTON, W. C.,	.	.	.	Red Wing.
WILSON, THOMAS,	.	.	.	Winona.
YOUNG, GEORGE B.,	.	.	.	St. Paul.

MISSOURI.

BRECKENRIDGE, SAMUEL M.,	.	.	.	St. Louis.
GALT, SMITH P.,	.	.	.	St. Louis.
NOBLE, JOHN W.,	.	.	.	St. Louis.

NEW HAMPSHIRE.

ATHERTON, HENRY B.,	.	.	.	Nashua.
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NEW JERSEY.

BEASLEY, MERCER, JR.,	.	.	.	Trenton.
KEASBEY, GEORGE M.,	.	.	.	Newark.
LITTLE, HENRY S.,	.	.	.	Trenton.

NEW YORK.

ISAACS, M. S.,	.	.	.	New York.
PARKER, ALTON B.,	.	.	.	Kingston.
PEABODY, CHARLES A.,	.	.	.	New York.
PRYOR, ROGER A.,	.	.	.	Brooklyn.
WINSLOW, JOHN,	.	.	.	New York.

OHIO.

GROESBECK, TELFORD,	.	.	.	Cincinnati.
LOGAN, THOMAS A.,	.	.	.	Cincinnati.
LONG, ALEXANDER,	.	.	.	Cincinnati.
RAMSAY, WM. M.,	.	.	.	Cincinnati.

PENNSYLVANIA.

ARNOLD, MICHAEL,	.	.	.	Philadelphia.
BAER, GEORGE F.,	.	.	.	Reading.
BAUSMAN, J. W. B.,	.	.	.	Lancaster.
BRECK, CHARLES DU PONT,	.	.	.	Scranton.
DARLING, EDWARD P.,	.	.	.	Wilkesbarre.
FRANKLIN, W. M.,	.	.	.	Lancaster.
GATES, Q. A.,	.	.	.	Wilkesbarre.
GILBERT, LYMAN D.,	.	.	.	Harrisburg.
GROSS, JOSEPH P.,	.	.	.	Philadelphia.
GUTHRIE, GEORGE W.,	.	.	.	Pittsburg.
HEVERIN, JAMES H.,	.	.	.	Philadelphia.
KULP, GEORGE B.,	.	.	.	Wilkesbarre.
LAMBERTON, C. L.,	.	.	.	Wilkesbarre.
LEAR, GEORGE,	.	.	.	Doylestown.
LIVINGSTON, JOHN B.,	.	.	.	Lancaster.
MERCER, GEORGE G.,	.	.	.	Philadelphia.
METZGER, THOMAS B.,	.	.	.	Allentown.
NORTH, E. D.,	.	.	.	Lancaster.
PENNSYPACKER, SAMUEL W.,	.	.	.	Philadelphia.
REED, ANDREW,	.	.	.	Lewistown.
REYNOLDS, SAMUEL H.,	.	.	.	Lancaster.
ROBR, SAMUEL,	.	.	.	Philadelphia.
SANDERS, DALLAS,	.	.	.	Philadelphia.
SMITH, WALTER GEORGE,	.	.	.	Philadelphia.
STEWART, JOHN,	.	.	.	Chambersburg.
WOLVERTON, SIMON P.,	.	.	.	Sunbury.

RHODE ISLAND.

GORMAN, CHARLES E.,	.	.	.	Providence.
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TENNESSEE.

ALLISON, ANDREW,	.	.	.	Nashville.
CARROLL, WILLIAM H.,	.	.	.	Memphis.
DEMOSS, ABRAM L.,	.	.	.	Nashville.
ELLETT, HENRY T.,	.	.	.	Memphis.
McFARLAND, L. B.,	.	.	.	Memphis.
MORGAN, ROBERT J.,	.	.	.	Memphis.
PIERCE, JAMES O.,	.	.	.	Memphis.
SNEED, JOHN L. T.,	.	.	.	Memphis.
WALKER, SAMUEL P.,	.	.	.	Memphis.

TEXAS.

WAELDER, JACOB, San Antonio.

 RECAPITULATION.

States.	No. of Members.	States.	No. of Members.
ARKANSAS,	1	MINNESOTA,	21
CONNECTICUT,	2	MISSOURI,	3
GEORGIA,	11	NEW HAMPSHIRE,	1
ILLINOIS,	5	NEW JERSEY,	3
KANSAS,	1	NEW YORK,	5
KENTUCKY,	2	OHIO,	4
LOUISIANA,	5	PENNSYLVANIA,	26
MAINE,	4	RHODE ISLAND,	1
MARYLAND,	2	TENNESSEE,	9
MASSACHUSETTS,	5	TEXAS,	1
MICHIGAN,	9		121

MEMORANDUM.

The Association gave a dinner to its members, at the Grand Union Hotel, on the evening of August 11, 1882. About one hundred members were present. William M. Evarts, of New York, presided.

CONSTITUTION.

NAME AND OBJECT.

ARTICLE I.—This Association shall be known as “THE AMERICAN BAR ASSOCIATION.” Its object shall be to advance the science of jurisprudence, promote the administration of justice and uniformity of legislation throughout the Union, uphold the honor of the profession of the law, and encourage cordial intercourse among the members of the American Bar.

QUALIFICATIONS FOR MEMBERSHIP.

ARTICLE II.—Any person shall be eligible to membership of this Association who shall be, and shall, for five years next preceding, have been, a member in good standing of the Bar of any state, and who shall also be nominated as hereinafter provided.

OFFICERS AND COMMITTEES.

ARTICLE III.—The following officers shall be elected at each Annual Meeting for the year ensuing: A President (the same person shall not be elected President two years in succession); one Vice-President from each state; a Secretary; a Treasurer; a Council, consisting of one member from each state (the Council shall be a standing committee on nominations for office); an Executive Committee, to be composed of the Secretary and Treasurer, together with three members to be chosen by the Association, one of whom shall be Chairman of the committee.

The following committees shall be annually appointed by the President for the year ensuing, and shall consist of five members each :

- On Jurisprudence and Law Reform ;
- On Judicial Administration and Remedial Procedure ;
- On Legal Education and Admissions to the Bar ;
- On Commercial Law ;
- On International Law ;
- On Publications ;
- On Grievances.

A majority of those members of any committee, including the Council who may be present at any meeting of the Association, shall constitute a quorum of such committee for the puposes of such meeting.

The Vice-President for each state, and not less than two other members from such state, to be annually elected, shall constitute a Local Council for such state, to which shall be referred all applications for membership from such state. The Vice-President shall be, *ex officio*, Chairman of such Council.

A committee of three, of whom the Secretary shall always be one, shall be appointed by the President at each Annual Meeting of the Association, whose duty it shall be to report to the next meeting the names of all members who shall, in the interval, have died, with such notices of them as shall, in the discretion of the committee, be proper.

It shall be the duty of the Vice-President from each state and territory to report the deaths of members within the same to the said committee.

ELECTION OF MEMBERS.

ARTICLE IV.—All nominations for membership shall be made by the Local Council of the state to the Bar of which the persons nominated belong. Such nominations must be

transmitted in writing to the Chairman of the General Council, and approved by the Council, on vote by ballot.

The General Council may also nominate members from states having no Local Council, and at the Annual Meeting of the Association, in the absence of all members of the Local Council of any state.

All nominations thus made or approved shall be reported by the Council to the Association, and all whose names are reported shall thereupon become members of the Association; *Provided*, That if any member demand a vote upon any name thus reported, the Association shall thereupon vote thereon by ballot.

Several nominees, if from the same state, may be voted for upon the same ballot; and in such case placing the word "No" against any name or names upon the ticket shall be deemed a negative vote against such name or names, and against those only. Five negative votes shall suffice to defeat an election.

ARTICLE V.—All members of the Conference adopting the Constitution, and all persons elected by them upon the recommendation of the Committee of five appointed by such Conference, shall become members of the Association upon payment of the annual dues for the current year herein provided for.

BY-LAWS.

ARTICLE VI.—By-laws may be adopted at any Annual Meeting of the Association by a majority of the members present. It shall be the duty of the Executive Committee, without delay, to adopt suitable by-laws, which shall be in force until rescinded by the Association.

DUES.

ARTICLE VII.—Each member shall pay five dollars to the Treasurer as annual dues, and no person shall be qualified

to exercise any privilege of membership who is in default. Such dues shall be payable, and the payment thereof enforced, as may be provided by the By-Laws. Members shall be entitled to receive all publications of the Association free of charge.

ANNUAL ADDRESS.

ARTICLE VIII.—The President shall open each Annual Meeting of the Association with an address, in which he shall communicate the most noteworthy changes in statute law on points of general interest made in the several states and by Congress during the preceding year. It shall be the duty of the member of the General Council from each state to report to the President, on or before the first day of May, annually, any such legislation in his state.

ANNUAL MEETINGS.

ARTICLE IX.—This Association shall meet annually in the month of July or August, at such time and place as the Executive Committee may select, and those present at such meeting shall constitute a quorum.

AMENDMENTS.

ARTICLE X.—This Constitution may be altered or amended by a vote of three-fourths of the members present at any Annual Meeting, but no such change shall be made at any meeting at which less than thirty members are present.

CONSTRUCTION.

ARTICLE XI.—The word "*state*," wherever used in this Constitution, shall be deemed to be equivalent to *state, territory, and the District of Columbia*.

BY-LAWS.

MEETINGS OF THE ASSOCIATION.

I.—The Executive Committee, at its first meeting after each Annual meeting, shall select some person to make an address at the next Annual Meeting, and not exceeding six members of the Association to read papers.

II.—The order of exercises at the Annual Meeting shall be as follows:

- (a) Opening Address of the President.
- (b) Nominations and Election of Members.
- (c) Election of the General Council.
- (d) Reports of Secretary and Treasurer.
- (e) Report of Executive Committee.
- (f) Reports of Standing Committees :
 - On Jurisprudence and Law Reform ;
 - On Judicial Administration and Remedial Procedure ;
 - On Legal Education and Admissions to the Bar ;
 - On Commercial Law ;
 - On International Law.
 - On Publications ;
 - On Grievances.
- (g) Reports of Special Committees.
- (h) The Nomination of Officers.
- (i) Miscellaneous Business.
- (j) The Election of Officers.

The address, to be delivered by a person invited by the Executive Committee, shall be made at the morning session of the second day of the Annual Meeting.

The reading and delivering of essays and papers shall be on the same day, or at such other time as the Executive Committee may determine.

III.—No person shall speak more than ten minutes at a time, or more than twice on one subject.

A stenographer shall be employed at each Annual Meeting.

IV.—Each state Bar Association may annually appoint delegates, not exceeding three in number, to the next meeting of the Association. In states where no state Bar Association exists, any city or county Bar Association may appoint such delegates, not exceeding two in number. Such delegates shall be entitled to all the privileges of membership at and during the said meeting.

V.—At any of the meetings of the Association, members of the Bar of any foreign country, or of any state, who are not members of the Association, may be admitted to the privileges of the floor during such meeting.

VI.—All papers read before the Association shall be lodged with the Secretary. The Annual Address of the President, the reports of committees, and all proceedings at the Annual Meeting shall be printed; but no other address made or paper read or presented shall be printed, except by order of the Committee on Publications.

Extra copies of reports, addresses, and papers read before the Association, may be printed by the Committee on Publications for the use of their authors, not exceeding two hundred copies to each of such authors.

No complimentary resolution to an officer or member for any service performed, paper read, or address delivered shall be considered by the Association.

OFFICERS AND COMMITTEES.

VII.—The terms of office of all officers elected at any Annual Meeting shall commence at the adjournment of such meeting, except the Council, whose term of office shall commence immediately upon their election.

VIII.—The President shall appoint all committees, except the Committee on Publications, within thirty days after the Annual Meeting, and shall announce them to the Secretary, and the Secretary shall promptly give notice to the persons appointed. The Committee on Publications shall be appointed on the first day of each meeting.

IX.—The Treasurer's Report shall be examined and audited annually, before its presentation to the Association, by two members to be appointed by the Chairman of the Executive Committee.

X.—The Council and all standing committees shall meet on the day preceding each Annual Meeting, at the place where the same is to be held, at such hour as their respective chairmen shall appoint. If at any Annual Meeting of the Association any member of any committee shall be absent, the vacancy may be filled by the members of the committee present.

XI.—The Committee on Publications shall also meet within one month after each Annual Meeting, at such time and place as the Chairman shall appoint.

XII.—Special meetings of any committee shall be held at such times and places as the Chairman thereof may appoint. Reasonable notice shall be given by him to each member by mail.

ANNUAL DUES.

XIII.—The annual dues shall be payable at the Annual Meeting, in advance. If any member neglect to pay them for any year at or before the next Annual Meeting, he shall cease to be a member. The Treasurer shall give notice of this by-law, within sixty days after each meeting, to all members in default.

PRESIDENT,
ALEXANDER R. LAWTON,
Savannah, Georgia.

SECRETARY,
EDWARD OTIS HINKLEY,
No. 43 North Charles Street, Baltimore, Maryland.

TREASURER,
FRANCIS RAWLE,
No. 402 Walnut Street, Philadelphia, Pennsylvania.

EXECUTIVE COMMITTEE.

LUKE P. POLAND, *St. Johnsbury, Vermont*, CHAIRMAN.
SIMEON E. BALDWIN, *New Haven, Connecticut.*
WILLIAM ALLEN BUTLER, *New York, New York.*

EX OFFICIO.

EDWARD OTIS HINKLEY, SECRETARY.
FRANCIS RAWLE, TREASURER.

COUNCIL.

<i>Alabama,</i>	DAVID CLOPTON.
<i>Arkansas,</i>	M. M. COHN.
<i>Connecticut,</i>	ROGER AVERILL.
<i>District of Columbia,</i>	J. HUBLEY ASHTON.
<i>Florida,</i>	E. M. RANDALL.
<i>Georgia,</i>	GEORGE A. MERCER.
<i>Illinois,</i>	E. B. SHERMAN.
<i>Indiana,</i>	ASA IGLEHART.
<i>Iowa,</i>	GEORGE G. WRIGHT.
<i>Kentucky,</i>	J. W. STEVENSON.
<i>Louisiana,</i>	THOMAS J. SEMMES.
<i>Maryland,</i>	L. L. CONRAD.
<i>Massachusetts,</i>	EDMUND H. BENNETT.
<i>Michigan,</i>	W. P. WELLS.
<i>Minnesota,</i>	HIRAM F. STEVENS.
<i>Missouri,</i>	WILLIAM H. H. RUSSELL.
<i>Nebraska,</i>	CHARLES F. MANDERSON.
<i>New Hampshire,</i>	J. M. SHIRLEY.
<i>New Jersey,</i>	JACOB WEART.
<i>New York,</i>	BENJAMIN A. WILLIS.
<i>North Carolina,</i>	THOMAS B. KEOGH.
<i>Ohio,</i>	WILLIAM A. DAVIDSON.
<i>Pennsylvania,</i>	THOMAS E. FRANKLIN.
<i>Rhode Island,</i>	CHARLES S. BRADLEY.
<i>Tennessee,</i>	BEDFORD M. ESTES.
<i>Texas,</i>	T. N. WAUL.
<i>Vermont,</i>	L. P. POLAND.
<i>Virginia,</i>	ROBERT OULD.
<i>West Virginia,</i>	JOHN A. HUTCHINSON.
<i>Wisconsin,</i>	JOHN W. CARY.

VICE-PRESIDENTS

AND

MEMBERS OF LOCAL COUNCILS.

ALABAMA.—Vice-President, D. S. TROY.

Local Council, LUTHER R. SMITH, DAVID BUELL.

ARKANSAS.—Vice-President, JAMES C. TAPPAN.

Local Council, U. M. ROSE, P. O. THWEATT.

CONNECTICUT.—Vice-President, ALVAN P. HYDE.

Local Council, LYMAN D. BREWSTER, JOHNSON T. PLATT, WASHINGTON F. WILLCOX.

DELAWARE.—Vice-President, THOMAS F. BAYARD.

Local Council, ANTHONY HIGGINS.

DISTRICT OF COLUMBIA.—Vice-President, H. H. WELLS.

Local Council, RICHARD T. MERRICK, NATHANIEL WILSON.

FLORIDA.—Vice-President, EDWIN M. RANDALL.

GEORGIA.—Vice-President, L. N. WHITTLE.

Local Council, N. J. HAMMOND, CHARLES C. JONES, JR., R. F. LYON, WALTER S. CHISHOLM.

ILLINOIS.—Vice-President, C. C. BONNEY.

Local Council, CHARLES DUNHAM, GUSTAVE KOERNER, R. BIDDLE ROBERTS.

INDIANA.—Vice-President, BENJAMIN HARRISON.

Local Council, J. A. S. MITCHELL, ABRAM W. HENDRICKS, ROBERT S. TAYLOR, JOHN M. BUTLER.

IOWA.—Vice-President, GEORGE G. WRIGHT.

Local Council, OLIVER P. SHIRAS.

KENTUCKY.—Vice-President, WILLIAM PRESTON.

Local Council, JOHN W. STEVENSON, JOHN MASON BROWN.

LOUISIANA.—Vice-President, F. P. POCHÉ.

Local Council, CARLETON HUNT, THOMAS L. BAYNE.

MAINE.—Vice-President, NATHAN WEBB.

Local Council, F. A. WILSON, O. D. BAKER.

MARYLAND.—Vice-President, SKIPWITH WILMER.

Local Council, A. LEO KNOTT, RICHARD M. VENABLE, HENRY STOCKBRIDGE, JULIAN J. ALEXANDER.

MASSACHUSETTS.—Vice-President, DWIGHT FOSTER.

Local Council, FRANK GOODWIN, EDWARD L. PIERCE, CHARLES W. CLIFFORD, NATHANIEL W. LADD.

MICHIGAN.—Vice-President, THOMAS M. COOLEY.

Local Council, ROBERT P. TOMS, D. DARWIN HUGHES, O'BRIEN J. ATKINSON.

MINNESOTA.—Vice-President, GORDON E. COLE.

Local Council, REUBEN C. BENTON, JOHN A. LOVELY, HIRAM F. STEVENS.

MISSISSIPPI.—Vice-President, LOCK E. HOUSTON.

Local Council, R. O. REYNOLDS.

MISSOURI.—Vice-President, HENRY HITCHCOCK.

Local Council, JAMES E. WITHROW, WARWICK HOUGH, GEORGE A. MADILL.

NEBRASKA.—Vice-President, JAMES M. WOOLWORTH.

Local Council, JAMES LAIRD, CHAS. F. MANDERSON.

NEW HAMPSHIRE.—Vice-President, WILLIAM S. LADD.

Local Council, CLINTON W. STANLEY, ALBERT S. WAIT, JOSEPH W. FELLOWS.

NEW JERSEY.—Vice-President, ANTHONY Q. KEASBEY.

Local Council, WASHINGTON B. WILLIAMS, CHARLES BORCHERLING, R. WAYNE PARKER.

NEW YORK.—Vice-President, EDWARD F. BULLARD.

Local Council, EVERETT P. WHEELER, JAMES M. DUDLEY, CHARLES A. PEABODY, WM. M. EVARTS.

NORTH CAROLINA.—Vice-President, THOMAS FULLER.

Local Council, JAMES E. BOYD, JOHN N. STAPLES.

OHIO.—Vice-President, RUFUS KING.

Local Council, RUFUS P. RANNEY, GEORGE W. HOUCK, D. A. HAYNES, ISAAC M. JORDAN.

PENNSYLVANIA.—Vice-President, GEORGE W. BIDDLE.

Local Council, ALBERT A. OUTERBRIDGE, HENRY GREEN, GEORGE SHIRAS, JR., HUGH M. NORTH, WILLIAM A. PORTER, ANDREW T. McCLINTOCK.

RHODE ISLAND.—Vice-President, CHARLES S. BRADLEY.

Local Council, BENJAMIN F. THURSTON, WILLIAM P. SHEFFIELD.

SOUTH CAROLINA.—Vice-President, HENRY E. YOUNG.

Local Council, C. H. SIMONTON, ROBERT W. BOYD.

TENNESSEE.—Vice-President, JOHN L. T. SNEED.

Local Council, ANDREW ALLISON, L. B. McFARLAND, A. T. McNEAL.

TEXAS.—Vice-President, R. G. STREET.

Local Council, F. S. STOCKDALE, J. C. HUTCHINSON, W. L. CRAWFORD, JACOB WAELDER.

VERMONT.—Vice-President, DANIEL ROBERTS.

Local Council, NORMAN PAUL, WILLIAM H. WALKER.

VIRGINIA.—Vice-President, J. RANDOLPH TUCKER.

Local Council, WILLIAM J. ROBERTSON, LEGH R. PAGE.

WEST VIRGINIA.—Vice-President, EDWARD B. KNIGHT.

Local Council, JOHN A. HUTCHINSON, FRANK HEREFORD.

WISCONSIN.—Vice-President, SILAS U. PINNEY.

Local Council, WILLIAM F. VILAS, ALFRED L. CARY, EPHRAIM MARINER.

COMMITTEES.

ON JURISPRUDENCE AND LAW REFORM.

WILLIAM ALLEN BUTLER, New York, New York.
SIMEON E. BALDWIN, New Haven, Connecticut.
HENRY HITCHCOCK, St. Louis, Missouri.
GEORGE TUCKER BISPHAM, Philadelphia, Pennsylvania.
SKIPWITH WILMER, Baltimore, Maryland.

ON JUDICIAL ADMINISTRATION AND REMEDIAL PROCEDURE.

RUFUS KING, Cincinnati, Ohio.
GEORGE W. BIDDLE, Philadelphia, Pennsylvania.
EDWARD J. PHELPS, Burlington, Vermont.
RICHARD T. MERRICK, Washington, District of Columbia.
WALTER B. HILL, Macon, Georgia.

ON LEGAL EDUCATION AND ADMISSIONS TO THE BAR.

CARLETON HUNT, New Orleans, Louisiana.
HENRY STOCKBRIDGE, Baltimore, Maryland.
U. M. ROSE, Little Rock, Arkansas.
GEORGE HOADLY, Cincinnati, Ohio.
EDMUND H. BENNETT, Taunton, Massachusetts.

ON COMMERCIAL LAW.

THOMAS J. SEMMES, New Orleans, Louisiana.
GEORGE A. MERCER, Savannah, Georgia.
JAMES T. MITCHELL, Philadelphia, Pennsylvania.
CORTLANDT PARKER, Newark, New Jersey.
WILLIAM J. ROBERTSON, Charlottesville, Virginia.

ON INTERNATIONAL LAW.

THOMAS M. COOLEY, Ann Arbor, Michigan.
JOHN W. STEVENSON, Covington, Kentucky.
JAMES O. BROADHEAD, St. Louis, Missouri.
JOHN E. WARD, New York, New York.
WILLIAM M. EVARTS, New York, New York.

ON PUBLICATIONS.

A. Q. KEASBEY, Newark, New Jersey.
CHARLES S. BRADLEY, Providence, Rhode Island.
FRANCIS RAWLE, Philadelphia, Pennsylvania.
ISAAC D. JONES, Baltimore, Maryland.
CHARLES N. DAVENPORT, Burlington, Vermont.

ON GRIEVANCES.

J. RANDOLPH TUCKER, Lexington, Virginia.
JAMES S. PIRTLE, Louisville, Kentucky.
HENRY JACKSON, Atlanta, Georgia.
STEPHEN W. KELLOGG, Waterbury, Connecticut.
WASHINGTON B. WILLIAMS, New Jersey.

ON OBITUARIES.

EDWARD O. HINKLEY, Baltimore, Maryland.
EVERETT P. WHEELER, New York, New York.
HENRY HITCHCOCK, St. Louis, Missouri.

MEMBERS—AUGUST, 1882-1883.

ALABAMA.

BRAGG, WALTER S.,	Montgomery.
BUELL, DAVID,	Greenville.
CLARK, GAYLORD B.,	Mobile.
CLOPTON, DAVID,	Montgomery.
SMITH, LUTHER R.,	Mount Sterling.
TROY, D. S.,	Montgomery.

ARKANSAS.

BENJAMIN, M. W.,	Little Rock.
COHN, M. M.,	Little Rock.
DU VAL, BENJAMIN T.,	Fort Smith.
HORNER, JOHN J.,	Helena.
MOORE, JOHN M.,	Little Rock.
ROSE, U. M.,	Little Rock.
TAPPAN, JAMES C.,	Helena.
THWEATT, P. O.,	Helena.

CONNECTICUT.

ADAMS, SHERMAN W.,	Hartford.
AVERILL, ROGER,	Danbury.
BALDWIN, SIMEON E.,	New Haven.
BREWSTER, LYMAN D.,	Danbury.
CORNWELL, HORACE,	Hartford.
CURTIS, JULIUS B.,	Stamford.
HAMERSLEY, WILLIAM,	Hartford.
HYDE, ALVAN P.,	Hartford.
INGERSOLL, COLIN M.,	New Haven.
KELLOGG, STEPHEN W.,	Waterbury.
KINGSBURY, FREDERICK J.,	Waterbury.
PARDEE, HENRY E.,	New Haven.
PERRY, JOHN H.,	Southport.
PHILLIPS, GILBERT W.,	Putnam.
PLATT, JOHNSON T.,	New Haven.

CONNECTICUT—Continued.

RUSSELL, TALCOTT H.,	New Haven.
SEYMOUR, EDWARD W.,	Litchfield.
TOWNSEND, WILLIAM K.,	New Haven.
WATROUS, GEORGE H.,	New Haven.
WILLCOX, W. F.,	Deep River.
WOODRUFF, GEORGE M.,	Litchfield.
WOODWARD, ASA B.,	Norwalk.

DELAWARE.

BAYARD, THOMAS F.,	Wilmington.
HIGGINS, ANTHONY,	Wilmington.

DISTRICT OF COLUMBIA.

APPLEBY, GEORGE F.,	Washington.
ASHTON, J. HUBLEY,	Washington.
BOND, S. R.,	Washington.
GARNETT, HENRY WISE,	Washington.
HAGNER, A. B.,	Washington.
HANNA, JOHN F.,	Washington.
JOHNSTON, JAMES M.,	Washington.
JOHNSTON, SANDERS W.,	Washington.
MELLOY, WILLIAM A.,	Washington.
MERRICK, RICHARD T.,	Washington.
MORRIS, M. F.,	Washington.
MORSE, A. PORTER,	Washington.
SELDEN, JOHN,	Washington.
WELLS, H. H.,	Washington.
WILSON, NATHANIEL,	Washington.

FLORIDA.

JONES, CHARLES W.,	Pensacola.
RANDALL, E. M.,	Jacksonville.

GEORGIA.

ADAMS, SAMUEL B.,	Savannah.
ANDERSON, CLIFFORD,	Macon.
BACON, AUGUSTUS O.,	Macon.
BARROW, POPE,	Athens.
BARTLETT, CHARLES L.,	Macon.
BLACK, J. C. C.,	Augusta.
CHARLTON, WALTER G.,	Savannah.

GEORGIA—Continued.

CHISHOLM, WALTER S.,	Savannah.
CUMMING, JOSEPH B.,	Augusta.
CUNNINGHAM, HENRY C.,	Savannah.
ELY, ROBERT N.,	Atlanta.
FALLIGANT, ROBERT,	Savannah.
HAMMOND, N. J.,	Atlanta.
HILL, WALTER B.,	Macon.
JACKSON, HENRY,	Atlanta.
JONES, CHARLES C., JR.,	Augusta.
LAWTON, ALEXANDER R.,	Savannah.
LYON, R. F.,	Macon.
MACKALL, WILLIAM W., JR.,	Savannah.
MERCER, GEORGE A.,	Savannah.
MILLER, FRANK H.,	Augusta.
TOMPKINS, HENRY B.,	Savannah.
WHITTLE, L. N.,	Macon.

ILLINOIS.

AYER, B. F.,	Chicago.
BONNEY, C. C.,	Chicago.
DAVIS, DAVID,	Bloomington.
DUNHAM, CHARLES,	Geneseo.
HOYNE, THOMAS,	Chicago.
KOERNER, GUSTAVE,	Belleville.
MASON, EDWARD G.,	Chicago.
ROBERTS, R. BIDDLE,	Chicago.
SHERMAN, E. B.,	Chicago.
STORRS, EMERY A.,	Chicago.
TRUMBULL, LYMAN,	Chicago.
WATERMAN, A. N.,	Chicago.

INDIANA.

ALDRICH, CHARLES H.,	Fort Wayne.
BUTLER, JOHN M.,	Indianapolis.
DAVIDSON, THOMAS F.,	Covington.
DYER, AZRO,	Evansville.
FAIRBANKS, CHARLES W.,	Indianapolis.
FISHBACK, W. P.,	Indianapolis.
HARRISON, BENJAMIN,	Indianapolis.
HENDRICKS, A. W.,	Indianapolis.
HENDRICKS, THOMAS A.,	Indianapolis.

INDIANA—Continued.

HINES, C. C.,	.	.	.	.	Indianapolis.
HORD, OSCAR B.,	.	.	.	.	Indianapolis.
MCDONALD, JOSEPH E.,	.	.	.	.	Indianapolis.
MITCHELL, JOSEPH A. S.,	.	.	.	.	Goshen.
NEBEKER, LUCAS,	.	.	.	.	Covington.
ROBERTSON, R. S.,	.	.	.	.	Fort Wayne.
TAYLOR, R. S.,	.	.	.	.	Fort Wayne.
WILSON, JOHN R.,	.	.	.	.	Indianapolis.
WILSON, WILLIAM C.,	.	.	.	.	Lafayette.

IOWA.

SHIRAS, OLIVER P.,	.	.	.	.	Dubuque.
WRIGHT, GEORGE G.,	.	.	.	.	Des Moines.

KANSAS.

BUCK, J. JAY,	.	.	.	.	Emporia.
FEIGHAN, JOHN W.,	.	.	.	.	Emporia.
STILLWELL, L.,	.	.	.	.	Osage Mission.

KENTUCKY.

BRECKENRIDGE, WM. C. P.,	.	.	.	.	Lexington.
BROWN, JOHN MASON,	.	.	.	.	Louisville.
BRYAN, JAMES W.,	.	.	.	.	Covington.
BUCKNER, B. F.,	.	.	.	.	Lexington.
DAVIE, GEORGE M.,	.	.	.	.	Louisville.
MOORE, J. Z.,	.	.	.	.	Owensboro.
PIRTLE, JAMES S.,	.	.	.	.	Louisville.
PRESTON, WILLIAM,	.	.	.	.	Lexington.
SCOTT, C. S.,	.	.	.	.	Lexington.
STEVENSON, JOHN W.,	.	.	.	.	Covington.
TRABUE, E. F.,	.	.	.	.	Louisville.
WHARTON, GABRIEL T.,	.	.	.	.	Louisville.
WILLSON, A. E.,	.	.	.	.	Louisville.

LOUISIANA.

ACKLEN, JOSEPH H.,	.	.	.	.	Franklin.
BAYNE, THOMAS L.,	.	.	.	.	New Orleans.
BENEDICT, W. S.,	.	.	.	.	New Orleans.
BREAUX, G. A.,	.	.	.	.	New Orleans.
BRICE, A. G.,	.	.	.	.	New Orleans.
GILLMORE, THOMAS,	.	.	.	.	New Orleans.

LOUISIANA—Continued.

HOWE, W. W.,	New Orleans.
HUNT, CARLETON,	New Orleans.
MCCALEB, E. HOWARD,	New Orleans.
MERRICK, EDWIN T.,	New Orleans.
MILLER, H. C.,	New Orleans.
PARDEE, DON A.,	New Orleans.
POCHÉ, F. P.,	St. James.
SEMMES, THOMAS J.,	New Orleans.

MAINE.

BAKER, ORVILLE D.,	Augusta.
CLEAVES, NATHAN,	Portland.
GOULD, A. P.,	Thomaston.
HASKELL, THOMAS H.,	Portland.
HOLMES, GEORGE F.,	Portland.
LIBBY, CHARLES F.,	Portland.
STETSON, CHARLES P.,	Bangor.
STROUT, A. A.,	Portland.
WEBB, NATHAN,	Portland.
WILSON, F. A.,	Bangor.
WOODWARD, CHARLES F.,	Bangor.

MARYLAND.

ALBERT, TALBOT J.,	Baltimore.
ALEXANDER, JULIAN J.,	Baltimore.
BEASTEN, CHARLES, JR.,	Baltimore.
BOARMAN, ROBERT R.,	Towsontown.
BONAPARTE, CHARLES J.,	Baltimore.
BROWN, SEBASTIAN,	Baltimore.
CONRAD, LOUIS L.,	Baltimore.
COWEN, JOHN K.,	Baltimore.
CROSS, E. J. D.,	Baltimore.
FISHER, WILLIAM A.,	Baltimore.
HINKLEY, EDWARD OTIS,	Baltimore.
JONES, ISAAC D.,	Baltimore.
KNOTT, A. LEO,	Baltimore.
LATROBE, JOHN H. B.,	Baltimore.
MARSHALL, CHARLES,	Baltimore.
MASON, JOHN T. (JOHN T. MASON, R.),	Baltimore.
MCINTOSH, DAVID G.,	Towsontown.
PAGE, HENRY,	Princess Anne.

MARYLAND—Continued.

ROBERTS, JOSEPH K., JR.,	Upper Marlboro.
ROBERTSON, A. H.,	Baltimore.
SHARP, GEORGE M.,	Baltimore.
SMALL, ALBERT,	Hagerstown.
STOCKBRIDGE, HENRY,	Baltimore.
VENABLE, RICHARD M.,	Baltimore.
WEST, CHARLES N.,	Baltimore.
WILLIAMS, EDWARD CALVIN,	Baltimore.
WILMER, SKIPWITH,	Baltimore.

MASSACHUSETTS.

ALLEN, STILLMAN B.,	Boston.
BALDWIN, G. W.,	Boston.
BARTLETT, SIDNEY,	Boston.
BELL, C. U.,	Lawrence.
BENNETT, EDMUND H.,	Taunton.
BISHOP, ROBERT R.,	Boston.
BRALEY, HENRY K.,	Fall River.
BROOKS, FRANCIS A.,	Boston.
BULLOCK, A. G.,	Worcester.
CHANDLER, ALFRED D.,	Boston.
CLIFFORD, CHARLES W.,	New Bedford.
CRAPO, WILLIAM W.,	New Bedford.
DICKINSON, M. F., JR.,	Boston.
DODGE, JOHN C.,	Boston.
ENDICOTT, WILLIAM C.,	Salem.
FORBUSH, GEORGE S.,	Boston.
FOSTER, DWIGHT,	Boston.
FOX, WILLIAM H.,	Taunton.
FULLER, HENRY,	Westfield.
FRENCH, WILLIAM B.,	Boston.
GASTON, WILLIAM,	Boston.
GILLIS, JAMES A.,	Salem.
GOODWIN, FRANK,	Boston.
HATHEWAY, SIMON W.,	Boston.
HEMENWAY, ALFRED,	Boston.
HOWE, ARCHIBALD M.,	Boston.
HUBBARD, CHARLES EUSTIS,	Boston.
HURD, FRANCIS W.,	Boston.
JONES, LEONARD A.,	Boston.
LADD, NATH. W.,	Boston.

MASSACHUSETTS—Continued.

MARSHALL, JOSHUA N.,	Lowell.
MARSTON, GEORGE,	New Bedford.
MERWIN, ELIAS,	Boston.
MUNROE, WILLIAM A.,	Boston.
MUZZEY, HENRY W.,	Boston.
MYERS, JAMES J.,	Boston.
PIERCE, EDWARD L.,	Boston.
PUTNAM, HENRY W.,	Boston.
RICHARDSON, DANIEL S.,	Lowell.
RICHARDSON, GEORGE F.,	Lowell.
RUSSELL, WILLIAM G.,	Boston.
SAVAGE, THOMAS,	Boston.
SEARS, PHILIP H.,	Boston.
SHATTUCK, GEORGE O.,	Boston.
SMITH, CHAUNCEY,	Boston.
SOUTHARD, CHARLES B.,	Boston.
SPAULDING, JOHN,	Boston.
STETSON, THOMAS M.,	New Bedford.
STEVENS, GEORGE,	Lowell.
STOREY, MOORFIELD,	Boston.
STORROW, JAMES J.,	Boston.
SWIFT, M. G. B.,	Fall River.
TREADWELL, JOHN P.,	Boston.
WARNER, JOSEPH B.,	Boston.
WESTWORTH, ALONZO B.,	Boston.

MICHIGAN.

ATKINSON, O'BRIEN J.,	Port Huron.
BALL, DANIEL H.,	Marquette.
COOLEY, THOMAS M.,	Ann Arbor.
DICKINSON, DON M.,	Detroit.
DUFFIELD, HENRY M.,	Detroit.
GEER, HARRISON,	Lapeer.
GRIFFIN, LEVI T.,	Detroit.
HENDERSON, HENRY P.,	Mason.
HUGHES, D. DARWIN,	Grand Rapids.
KENT, CHARLES A.,	Detroit.
POND, ASHLEY,	Detroit.
ROMEYN, THEODORE,	Detroit.
RUSSELL, ALFRED,	Detroit.
TOMS, ROBERT P.,	Detroit.

MICHIGAN—Continued.

WEADOCK, THOMAS A. E.,	.	.	.	Bay City.
WELLS, WILLIAM P.,	.	.	.	Detroit.

MINNESOTA.

BENTON, REUBEN C.,	.	.	.	Minneapolis.
COLE, GORDON E.,	.	.	.	Faribault.
DESTY, ROBERT,	.	.	.	St. Paul.
ENNSIGN, JOSIAH D.,	.	.	.	Duluth.
EUSTIS, WILLIAM H.,	.	.	.	Minneapolis.
GOULD, O. B.,	.	.	.	Winona.
HAHN, WILLIAM J.,	.	.	.	Minneapolis.
LEVI, ALBERT L.,	.	.	.	Minneapolis.
LOVELY, JOHN A.,	.	.	.	Albert Lea.
MARSH, FAYETTE,	.	.	.	Stillwater.
SANBORN, JOHN B.,	.	.	.	St. Paul.
SANBORN, WALTER H.,	.	.	.	St. Paul.
SEARLES, JASPER N.,	.	.	.	Stillwater.
STEVENS, HIRAM F.,	.	.	.	St. Paul.
WILLISTON, W. C.,	.	.	.	Redwing.
WILSON, THOMAS,	.	.	.	Winona.
YOUNG, GEORGE B.,	.	.	.	St. Paul.

MISSISSIPPI.

HOUSTON, LOCK E.,	.	.	.	Aberdeen.
HOWRY, CHARLES B.,	.	.	.	Oxford.
JOHNSTON, TOBY W.,	.	.	.	Columbus.
LEIGH, JOSEPH E.,	.	.	.	Columbus.
MACFARLAND, BAXTER,	.	.	.	Aberdeen.
ORR, J. A.,	.	.	.	Columbus.
REYNOLDS, R. O.,	.	.	.	Aberdeen.
SIMS, W. H.,	.	.	.	Columbus.
WHITFIELD, F. E.,	.	.	.	Corinth.

MISSOURI.

BAILEY, GEORGE W.,	.	.	.	St. Louis.
BRECKENRIDGE, SAMUEL M.,	.	.	.	St. Louis.
BROADHEAD, JAMES O.,	.	.	.	St. Louis.
COLLIER, M. DWIGHT,	.	.	.	St. Louis.
GALT, SMITH P.,	.	.	.	St. Louis.
GANTT, THOMAS T.,	.	.	.	St. Louis.
HAMMOND, WILLIAM G.,	.	.	.	St. Louis.

MISSOURI—Continued.

HENDERSON, J. B.,	.	.	.	St. Louis.
HITCHCOCK, HENRY,	.	.	.	St. Louis.
HOUGH, WARWICK,	.	.	.	Jefferson City.
KEHR, EDWARD C.,	.	.	.	St. Louis.
MADILL, GEORGE A.,	.	.	.	St. Louis.
NOBLE, JOHN W.,	.	.	.	St. Louis.
RANKIN, JOHN H.,	.	.	.	St. Louis.
RUSSELL, W. H. H.,	.	.	.	St. Louis.
SHIPPEN, JOSEPH,	.	.	.	St. Louis.
THOMPSON, SEYMOUR D.,	.	.	.	St. Louis.
WITHROW, JAMES E.,	.	.	.	St. Louis.

NEBRASKA.

MANDERSON, CHARLES F.,	.	.	.	Omaha.
WOOLWORTH, J. M.,	.	.	.	Omaha.

NEW HAMPSHIRE.

ATHERTON, HENRY B.,	.	.	.	Nashua.
BINGHAM, HARRY,	.	.	.	Littleton.
BURNHAM, HENRY E.,	.	.	.	Manchester.
CURRIER, FRANK D.,	.	.	.	E. Canaan.
FELLOWS, JOSEPH W.,	.	.	.	Manchester.
LADD, WILLIAM S.,	.	.	.	Lancaster.
MARSTON, GILMAN,	.	.	.	Exeter.
MITCHELL, JOHN M.,	.	.	.	Concord.
PIKE, AUSTIN F.,	.	.	.	Franklin.
SHIRLEY, JOHN M.,	.	.	.	Andover.
STANLEY, CLINTON W.,	.	.	.	Manchester.
WAIT, ALBERT S.,	.	.	.	Newport.

NEW JERSEY.

ALLEN, ROBERT, JR.,	.	.	.	Red Bank.
BORCHERLING, CHARLES,	.	.	.	Newark.
DICKINSON, S. MEREDITH,	.	.	.	Trenton.
FLEMMING, JAMES,	.	.	.	Jersey City.
GARRETSON, A. Q.,	.	.	.	Jersey City.
GOBLE, L. SPENCER,	.	.	.	Newark.
HERBERT, JOHN W., JR.,	.	.	.	Jersey City.
KEASBEY, ANTHONY Q.,	.	.	.	Newark.
KEASBEY, GEORGE M.,	.	.	.	Newark.
KINNEY, THOMAS T.,	.	.	.	Newark.

NEW JERSEY—Continued.

MCCARTER, THOMAS N.,	.	.	.	Newark.
PARKER, CORTLANDT,	.	.	.	Newark.
PARKER, R. WAYNE,	.	.	.	Newark.
RANDOLPH, JOSEPH F.,	.	.	.	Jersey City.
RICHEY, AUGUSTUS G.,	.	.	.	Trenton.
TEESE, FREDERICK H.,	.	.	.	Newark.
VREDENBURGH, JAMES B.,	.	.	.	Jersey City.
VROOM, GARRET D. W.,	.	.	.	Trenton.
WEART, JACOB,	.	.	.	Jersey City.
WEEKS, WILLIAM R.,	.	.	.	Newark.
WHITE, HENRY S.,	.	.	.	Jersey City.
WILLIAMS, WASHINGTON B.,	.	.	.	Jersey City.

NEW YORK.

BAKER, ASHLEY D. L.,	.	.	.	Gloversville.
BEAMAN, CHARLES C., JR.,	.	.	.	New York.
BENEDICT, ROBERT D.,	.	.	.	New York.
BRISTOW, BENJAMIN H.,	.	.	.	New York.
BULLARD, E. F.,	.	.	.	Saratoga.
BURNETT, HENRY L.,	.	.	.	New York.
BUTLER, WM. ALLEN,	.	.	.	New York.
CLARK, JAMES OLIVER,	.	.	.	New York.
CLARK, THOMAS ALLEN,	.	.	.	New York.
CROWELL, CHARLES E.,	.	.	.	New York.
DAVISON, CHARLES A.,	.	.	.	New York.
DILLON, JOHN F.,	.	.	.	New York.
DUDLEY, JAMES M.,	.	.	.	Johnstown.
EATON, SHERBURNE B.,	.	.	.	New York.
EMOTT, JAMES,	.	.	.	New York.
EVARTS, WILLIAM M.,	.	.	.	New York.
FOX, AUSTEN G.,	.	.	.	New York.
FRENCH, W. B.,	.	.	.	Saratoga.
HALE, MATTHEW,	.	.	.	Albany.
HUTCHINS, WALDO,	.	.	.	New York.
ISAACS, M. S.,	.	.	.	New York.
JEWETT, HUGH J.,	.	.	.	New York.
KERNAN, FRANCIS,	.	.	.	Utica.
LEEDS, CHARLES C.,	.	.	.	New York.
MACFARLAND, W. W.,	.	.	.	New York.
MALONE, PHILIP,	.	.	.	New York.
MATHEWS, ALBERT,	.	.	.	New York.

NEW YORK—Continued.

MOAK, N. C.,	.	.	.	.	Albany.
NASH, STEPHEN P.,	.	.	.	.	New York.
NELSON, HOMER A.,	.	.	.	.	Poughkeepsie.
NICOLL, DELANCEY,	.	.	.	.	New York.
PARKER, ALTON B.,	.	.	.	.	Kingston.
PARKER, AMASA J.,	.	.	.	.	Albany.
PEABODY, CHARLES A.,	.	.	.	.	New York.
PHELPS, WM. WALTER,	.	.	.	.	New York.
PORTER, JOHN K.,	.	.	.	.	New York.
PRIME, RALPH E.,	.	.	.	.	Yonkers.
PRYOR, ROGER A.,	.	.	.	.	Brooklyn.
ROGERS, SHERMAN S.,	.	.	.	.	Buffalo.
SCHLEY, WILLIAM,	.	.	.	.	New York.
SCHOONMAKER, AUGUSTUS, JR.,	.	.	.	.	Kingston.
SCUDDER, HENRY J.,	.	.	.	.	New York.
SHEPARD, ELLIOTT F.,	.	.	.	.	New York.
SMITH, HORACE E.,	.	.	.	.	Albany.
SPRAGUE, E. C.,	.	.	.	.	Buffalo.
SPEIR, GILBERT M., JR.,	.	.	.	.	New York.
STERNE, SIMON,	.	.	.	.	New York.
STICKNEY, ALBERT,	.	.	.	.	New York.
SULLIVAN, ALGERNON S.,	.	.	.	.	New York.
TAYLOR, JOHN D.,	.	.	.	.	New York.
TODD, A. J.,	.	.	.	.	New York.
VANDERPOEL, A. J.,	.	.	.	.	New York.
VAN WINKLE, E. S.,	.	.	.	.	New York.
WARD, JOHN E.,	.	.	.	.	New York.
WARREN, IRA D.,	.	.	.	.	New York.
WHEELER, EVERETT P.,	.	.	.	.	New York.
WILLIS, BENJAMIN A.,	.	.	.	.	New York.
WINSLOW, JOHN,	.	.	.	.	New York.

NORTH CAROLINA.

BOYD, JAMES E.,	.	.	.	.	Greensboro.
KEOGH, THOMAS B.,	.	.	.	.	Greensboro.
STAPLES, JOHN N.,	.	.	.	.	Greensboro.

OHIO.

BAKER, WILLIAM,	.	.	.	.	Toledo.
BALDWIN, CHARLES C.,	.	.	.	.	Cleveland.
BALL, FLAMEN,	.	.	.	.	Cincinnati.

OHIO—Continued.

CRAIGHEAD, S.,	Dayton.
DAUGHERTY, M. A.,	Lancaster.
DAVIDSON, WILLIAM A.,	Cincinnati.
FERGUSON, E. A.,	Cincinnati.
FORCE, MANNING F.,	Cincinnati.
GOTTSCHALL, O. M.,	Dayton.
GRANGER, M. M.,	Zanesville.
GREEN, EDWIN P.,	Akron.
GRINCKEL, LEWIS B.,	Dayton.
GRISWOLD, SENECA O.,	Cleveland.
HARRISON, RICHARD A.,	Columbus.
HAYNES, DANIEL A.,	Dayton.
HOADLY, GEORGE,	Cincinnati.
HODGE, NOAH,	Akron.
HOUK, GEORGE W.,	Dayton.
HUTCHINS, W. A.,	Portsmouth.
JOHNSON, EDGAR M.,	Cincinnati.
JORDAN ISAAC M.,	Cincinnati.
KING, RUFUS,	Cincinnati.
MASON, JAMES,	Cleveland.
MATTHEWS, STANLEY,	Cincinnati.
MCCLINTOCK, W. T.,	Chillicothe.
MORRIS, S. W.,	Ironton.
MUNGER, WARREN,	Dayton.
NOBLE, HENRY C.,	Columbus.
PAGE, HENRY F.,	Circleville.
RANNEY, HENRY C.,	Cleveland.
RANNEY, RUFUS P.,	Cleveland.
SHAW, R. K.,	Marietta.
SHOEMAKER, MURRAY C.,	Cincinnati.
TAFT, ALFONSO,	Cincinnati.
UPSON, WILLIAM H.,	Akron.
YOUNG, EDMUND S.,	Dayton.

PENNSYLVANIA.

ARMSTRONG, WM. H.,	Williamsport.
ARNOLD, MICHAEL,	Philadelphia.
BAER, GEORGE F.,	Reading.
BALDWIN, HENRY, JR.,	Philadelphia.
BAUSMAN, J. W. B.,	Reading.
BIDDLE, GEORGE W.,	Philadelphia.

PENNSYLVANIA—Continued.

BISPHAM, GEORGE TUCKER,	Philadelphia.
BRECK, CHARLES DU PONT,	Scranton.
BRUNDAGE, A. R.,	Wilkesbarre.
CRAWFORD, GEORGE L.,	Philadelphia.
DARLING, EDWARD P.,	Wilkesbarre.
DARLING, J. VAUGHAN,	Wilkesbarre.
ELLMAKER, NATHANIEL,	Lancaster.
FRANKLIN, THOMAS E.,	Lancaster.
GATES, Q. A.,	Wilkesbarre.
GILBERT, LYMAN D.,	Harrisburg.
GREEN, HENRY,	Easton.
GROSS, JOSEPH P.,	Philadelphia.
GUTHRIE, GEORGE M.,	Pittsburg.
HAND, ALFRED,	Scranton.
HANDLEY, JOHN,	Scranton.
HAY, MALCOLM,	Pittsburg.
HEMPHILL, JOSEPH,	West Chester.
HEVERIN, JAMES H.,	Philadelphia.
HOYT, HENRY M.,	Wilkesbarre.
HUEY, SAMUEL B.,	Philadelphia.
KULP, GEORGE B.,	Wilkesbarre.
LAMBERTON, C. L.,	Wilkesbarre.
LEAR, GEORGE,	Doylestown.
LITTLE, WILLIAM E.,	Tunkhannock.
LUCKENBACH, W. D.,	Allentown.
MACVEAGH, WAYNE,	Philadelphia.
MCCINTOCK, ANDREW T.,	Wilkesbarre.
MERCER, GEORGE G.,	Philadelphia.
METZGER, THOMAS B.,	Allentown.
MITCHELL, JAMES T.,	Philadelphia.
MONAGHAN, ROBERT E.,	West Chester.
NORTH, E. D.,	Lancaster.
NORTH, HUGH M.,	Columbia.
OUTERBRIDGE, ALBERT A.,	Philadelphia.
PALMER, HENRY W.,	Wilkesbarre.
PATTERSON, C. STUART,	Philadelphia.
PENNYPACKER, CHARLES H.,	West Chester.
PENNYPACKER, SAMUEL W.,	Philadelphia.
PERKINS, SAMUEL C.,	Philadelphia.
PETTIT, SILAS W.,	Philadelphia.
PORTER, WILLIAM A.,	Philadelphia.

PENNSYLVANIA—Continued.

PRICE, J. SERGEANT,	.	.	.	Philadelphia.
RAWLE, FRANCIS,	.	.	.	Philadelphia.
RAWLE, WM. HENRY,	.	.	.	Philadelphia.
REED, HENRY,	.	.	.	Philadelphia.
REYNOLDS, SAMUEL H.,	.	.	.	Lancaster.
ROBB, SAMUEL,	.	.	.	Philadelphia.
SANDERS, DALLAS,	.	.	.	Philadelphia.
SEIBERT, W. N.,	.	.	.	New Bloomfield.
SHARP, ISAAC S.,	.	.	.	Philadelphia.
SHIRAS, GEORGE, JR.,	.	.	.	Pittsburg.
SHOEMAKER, L. D.,	.	.	.	Wilkesbarre.
SLAYMAKER, AMOS,	.	.	.	Lancaster.
SMITH, WALTER GEORGE,	.	.	.	Philadelphia.
STEWART, JOHN,	.	.	.	Chambersburg.
STEWART, W. F. BAY,	.	.	.	York.
STURGIS, E. B.,	.	.	.	Scranton.
VAUX, RICHARD,	.	.	.	Philadelphia.
WADDELL, WILLIAM B.,	.	.	.	West Chester.
WAGNER, SAMUEL,	.	.	.	Philadelphia.
WILLARD, EDWARD N.,	.	.	.	Scranton.
WILTBANK, WILLIAM W.,	.	.	.	Philadelphia.
WOLVERTON, SIMON P.,	.	.	.	Sunbury.
WOODWARD, STANLEY,	.	.	.	Wilkesbarre.

RHODE ISLAND.

BRADLEY, CHARLES S.,	.	.	.	Providence.
GORMAN, CHARLES E.,	.	.	.	Providence.
SHEFFIELD, WILLIAM P.,	.	.	.	Newport.
THURSTON, BENJAMIN F.,	.	.	.	Providence.

SOUTH CAROLINA.

BACOT, T. W.,	.	.	.	Charleston.
BARKER, THEODORE G.,	.	.	.	Charleston.
BENET, WILLIAM C.,	.	.	.	Abbeville.
BOYD, ROBERT W.,	.	.	.	Darlington.
CAMPBELL, JAMES B.,	.	.	.	Charleston.
MCCRADY, EDWARD, JR.,	.	.	.	Charleston.
SIMONTON, C. H.,	.	.	.	Charleston.
SMYTHE, AUGUSTINE T.,	.	.	.	Charleston.
YOUNG, HENRY E.,	.	.	.	Charleston.

TENNESSEE.

ALLISON, ANDREW,	.	.	.	.	Nashville.
BATE, H. R.,	.	.	.	.	Covington.
BROWN, JOHN C.,	.	.	.	.	Pulaski.
COOPER, EDMUND,	.	.	.	.	Shelbyville.
COOPER, WILLIAM F.,	.	.	.	.	Nashville.
ELLETT, HENRY T.,	.	.	.	.	Memphis.
ESTES, BEDFORD M.,	.	.	.	.	Memphis.
FENTRESS, JAMES,	.	.	.	.	Bolivar.
HOUSE, WILLIAM,	.	.	.	.	Franklin.
McFARLAND, L. B.,	.	.	.	.	Memphis.
McNEAL, ALBERT T.,	.	.	.	.	Bolivar.
MOORMAN, H. C.,	.	.	.	.	Somerville.
MORGAN, ROBERT J.,	.	.	.	.	Memphis.
SNEED, JOHN L. T.,	.	.	.	.	Memphis.
STEELE, THOMAS,	.	.	.	.	Ripley.
WALKER, SAMUEL P.,	.	.	.	.	Memphis.
WOOD, R. H.,	.	.	.	.	Bolivar.

TEXAS.

BALLENGER, W. P.,	.	.	.	.	Galveston.
CRAWFORD, W. L.,	.	.	.	.	Dallas.
FULTON, MARSHALL,	.	.	.	.	Denton.
GAINES, R. R.,	.	.	.	.	Paris.
STOCKDALE, F. S.,	.	.	.	.	Cuero.
STREET, ROBERT G.,	.	.	.	.	Galveston.
WAELDER, JACOB,	.	.	.	.	San Antonio.
WAUL, T. N.,	.	.	.	.	Galveston.
WEST, C. S.,	.	.	.	.	Austin.
WILLIE, A. H.,	.	.	.	.	Galveston.

VERMONT.

DAVENPORT, CHARLES N.,	.	.	.	.	Brattleboro.
HINCKLEY, LYMAN G.,	.	.	.	.	Chelsea.
JOHNSON, WILLIAM E.,	.	.	.	.	Woodstock.
LAWRENCE, L. L.,	.	.	.	.	Burlington.
NOBLE, GUY C.,	.	.	.	.	St. Albans.
PAUL, NORMAN,	.	.	.	.	Woodstock.
PHELPS, EDWARD J.,	.	.	.	.	Burlington.
POLAND, LUKE P.,	.	.	.	.	St. Johnsbury.
PROUT, JOHN,	.	.	.	.	Rutland.
ROBERTS, DANIEL,	.	.	.	.	Burlington.

VERMONT—Continued.

SHAW, WILLIAM G.,	.	.	.	Burlington.
SMALLEY, B. B.,	.	.	.	Burlington.
• TUPPER, A. P.,	.	.	.	Middleboro.
WALKER, W. H.,	.	.	.	Ludlow.

VIRGINIA.

HAMILTON, ALEXANDER,	.	.	.	Petersburg.
OULD, ROBERT,	.	.	.	Richmond.
PAGE, LEIGH R.,	.	.	.	Richmond.
ROBERTSON, WILLIAM J.,	.	.	.	Charlottesville.
TUCKER, J. RANDOLPH,	.	.	.	Lexington.

WEST VIRGINIA.

BOGGESE, CALEB,	.	.	.	Clarksburg.
HEREFORD, FRANK,	.	.	.	Union.
HUTCHINSON, JOHN A.,	.	.	.	Parkersburg.
KNIGHT, EDWARD B.,	.	.	.	Charleston.

WISCONSIN.

CARY, ALFRED L.,	.	.	.	Milwaukee.
CARY, JOHN W.,	.	.	.	Milwaukee.
CARY, MILBERT B.,	.	.	.	Milwaukee.
GREGORY, J. C.,	.	.	.	Madison.
HOOKE, DAVID G.,	.	.	.	Milwaukee.
HUDD, THOMAS R.,	.	.	.	Green Bay.
JENKINS, JAMES G.,	.	.	.	Milwaukee.
MARINER, EPHRAIM,	.	.	.	Milwaukee.
PINNEY, SILAS U.,	.	.	.	Madison.
VILAS, WILLIAM F.,	.	.	.	Madison.
WEGG, DAVID S.,	.	.	.	Milwaukee.
WINKLER, FREDERICK C.,	.	.	.	Milwaukee.

OBITUARIES.

KENTUCKY.

MARTIN BIJUR.

Martin Bijur died at his home in Louisville, Kentucky, on April 30, 1882. He was born in Prussia, February 28, 1833, and received his education in that country. He immigrated to America in 1850, and a short time after landing, came to Louisville, where he has lived ever since. Soon after his arrival there he entered upon the study of law, prosecuted his work with great zeal and energy for several years, and was admitted to the bar in 1856. Almost as soon as his license was procured he stepped into a lucrative practice in the higher courts. He first entered into partnership with L. M. Dembitz, but severed this connection shortly afterward, and continued his practice in partnership with Byron Bacon. Later he became a partner of Judge P. B. Muir, and next a member of the firm of Muir, Bijur, & Davie. Some time ago Judge Muir retired from the firm, leaving Bijur and Davie as partners, which has been the style of the firm ever since. Mr. Bijur was small in stature, but strong and healthy, never having experienced any illness until the fatal one. He was one of the few men who rise to distinction by their own talents and efforts, and was in truth a self-made man. For a number of years before his death he was recognized as one of the finest jury lawyers in the state. Combining a vast amount of legal knowledge with uncommon ability and

shrewdness, he managed a case with rare tact and precision. He was everywhere remarkable for his powers of cross-examination, which was his specialty, and a witness who told any semblance of a falsehood was sure to be detected. Broad and liberal in all his views, polite and affable in his manner, and winning in his address, he was admired and respected by all who knew him. In politics, although he rarely took an active part, he was a Republican, and was elected to the legislature on that ticket in 1865. He was also one of the Republican state electors in 1876. These were the only two political positions he ever held, and he did not aspire to higher political honors.

He leaves a wife and three daughters.

MARYLAND.

RICHARD J. GITTINGS.

Richard J. Gittings, of Baltimore, died at Ocean City, Maryland, on August 2, 1882, in the fifty-third year of his age. He was born May 22, 1830, on the family estate, "Roslin," in Baltimore County. He attended school at New London Cross Roads, Chester County, Pennsylvania, and also at Sweet Air, whence he entered the college of New Jersey at Princeton. He graduated a Bachelor of Arts in 1849, taking second honors in a class of eighty, in which he was next to the youngest in years. He studied law in the office of Mr. George H. Williams, and afterwards at the law school of Harvard University, where he received the degree of LL.B. He was admitted to the bar in Baltimore County in 1852, and soon after to the bar of the Court of Appeals and the Supreme Court of the United States. He

formed a partnership in the practice of the law with his classmate at Harvard, Mr. A. W. Machen, which lasted until the death of Mr. Gittings. In 1855 he was elected State's Attorney for Baltimore County, and re-elected in 1859, defeating Lloyd W. Williams the first time; and when a candidate for re-election, his competitor was Mr. Richard Grayson, who has since become Chief Judge. As the State's Attorney for Baltimore County, he conducted the memorable prosecution of the murderers Crops and Corrie, in which he was aided by Mr. Machen, and the counsel for the defense were the late Wm. P. Preston and Hon. Wm. Pinkney Whyte. In 1876, Mr. Gittings was an elector on the Tilden and Hendricks ticket, which was his last appearance in a political connection.

Mr. Gittings, soon after his admission to the bar, entered on an extensive practice, rising rapidly to a leading position in the profession. He was thenceforward until his death engaged in the arduous labors of a busy advocate, which afforded but few periods for rest and recuperation, and it is thought did not leave him sufficient physical stamina to meet a sharp attack of illness. He was engaged, on one side or the other, in a large proportion of the important civil cases tried in the courts of Baltimore City and County in the past twenty-five years. He was one of the counsel for the defense in the case of Samuel McDonald, tried for the murder of Berry Amos. Another important case of his was Clare's trial for murder, which he successfully defended. One of the latest celebrated cases in the trial of which he was active, was the Johns will case, where he was on the winning side, in the Court of Common Pleas, in which the trial lasted forty days. Mr. Gittings leaves a widow—whose maiden name was Victoria Sellman, daughter of Colonel Alfred Sellman, of Anne Arundel County—with one son and five daughters.

NEW JERSEY.

ISAAC WILLIAMSON SCUDDER.

Isaac W. Scudder, one of the best known and for many years a leading lawyer of the state of New Jersey, died at his residence in Jersey City, New Jersey, on September 10, 1881, in the sixty-fifth year of his age.

He was born at Elizabethtown, in that state. His father, Smith Scudder, was a lawyer of distinction, and wrapt up in his profession. Mr. Scudder was admitted to practice as an attorney in 1838, and on the formation of Hudson County, moved to Jersey City, and remained there until his death.

He took an active part in the successful government of the nation and of his native state, but was in no sense an office-seeker, although he held several important positions during his life. He was early appointed Prosecutor of the Pleas of Hudson County, and one of the first cases which it was his duty to prosecute was the case of *State vs. Spencer*. Spencer was indicted for the murder of his wife, and he conducted the cause with such ability and learning that wide attention was directed to him. He served in this capacity for two terms of five years each, with an interval between the terms.

When the Seventh Congressional District in the state of New Jersey was created, Mr. Scudder was elected, in the face of an adverse majority of several thousand, as the first Representative from that district to the House of Representatives of the United States, and served with untiring industry and marked ability during his term. But he disliked any office which might be considered out of the line of his profession as an advocate, and he therefore uniformly declined, although

often urged to accept the nomination to the office of governor of the state, when such nomination was equivalent to an election.

His lore was in his profession, and he excelled more especially as an adviser, although he was also a great advocate.

Early in his professional life he became connected with the corporations of the county and state, grew up with them, and for forty years he was counsel to the railroad corporations, and of later years shaped and controlled their great interests which centred in Jersey City.

He was the counsel of "The Associates of the Town of Jersey," and conducted the litigation which established their ownership of the water front of Jersey City; and when this passed under the control of the New Jersey Railroad Company, he became counsel of that company, and in that position he planned and carried forward the legal proceedings by which the Pennsylvania Railroad Company leased the United Railroads of New Jersey, and he conducted that most important litigation by which the lease was finally consummated.

Mr. Scudder was also engaged in almost all the important suits arising in that county in relation to titles to land. His name appears in the reports of the highest court of his state for a period of forty years continually. He brought to each cause very ripe learning, a large and comprehensive view of the law, and a very thorough preparation both as to law and fact, prepared by diligent labor and untiring industry.

These elements of his character made him valuable to his clients; and gave him much influence with the court. His personal and private character was in every way above reproach. His was not a dwarfed nor one-sided character, not a character wrapped up in sordid selfishness, but one that was full and rounded, which exhibited the fullest development of a noble manhood.

One of his marked characteristics was his great industry, which might be said to have been strong in him even in death, since it came to him in his office and at his desk, when engaged in the preparation of a cause then noticed for trial; and he died at his work without even having retired to his couch.

NEW YORK.

CLARKSON N. POTTER.

MR. PRESIDENT AND BRETHREN OF THE AMERICAN BAR ASSOCIATION:—On behalf of the Committee on Obituaries, and at their request, I submit this memorial of Clarkson N. Potter.

It is a striking instance of the uncertainty of this life, that we should begin our Annual Meeting with this notice of the death of he whom we elected our President a year ago. To all appearance he was then in the full vigor of manhood, and destined to long years of activity and usefulness. The summons to depart hence came to him while he was arguing a cause in the Court of Appeals of the state of New York. He was removed to his home, and died there six days later, January 23, 1882. It is fitting that we commemorate his virtues and express our sorrow that we are to share no more his cordial and graceful hospitality, nor hear his silvery voice, nor learn from his clear and vigorous intellect.

Mr. Potter was thoroughly a man of this generation. The means of rapid communication, which steamboat and railroad and telegraph have put at our disposal, have produced an activity of which former ages furnish no parallel. This has formed a type of man peculiarly its own. The leaders of men to-day do not meditate as profoundly, and, it may

be, do not perform as lasting work, as their fathers; but they are fertile in expedient, quick in decision, bold in action. All these qualities our friend possessed to a remarkable degree. He showed them in his political career; he showed them at the bar. His very amusements were full of activity. His flowers were rare plants—were as dear to him as his causes—and he brought to their care and culture equal enthusiasm.

His father, the Bishop of Pennsylvania, was a gentleman of the old school—full of gravity and quiet dignity. His political opinions were of the Federalist type. His son's were gathered in the school of Jefferson. But unlike many of his political associates, he realized that while principles never change, their application varies from age to age, and that the conservatism of to-day stands where the most progressive stood a generation ago.

This willingness to learn is one of the most marked characteristics of our age. It has seen so much that was said to be impossible; it has realized so often the French proverb that the thing you don't expect is always that which happens, that it is full of the impressibility and receptiveness of youth. Mr. Potter, as I have said, was a man of his time. He was no Bourbon. He had learned much, and he knew that there was much that it was wise to forget.

There is an album in Germany, on one page of which Guizot, Thiers, and Bismarck each inscribed a sentence.

Guizot wrote :

"The result of my long experience in life is that it is wise always to forgive, but never to forget."

Thiers wrote below :

"A little forgetfulness would not impair the sincerity of the forgiveness."

Bismarck added :

"I have been so busy that I have been obliged to forget."

A man of action must needs learn this lesson, and our friend was an apt scholar. In this day, therefore, especially, when what both political parties need most is courageous, intelligent, and large-minded leaders, it is not too much to say that the death of Mr. Potter was a national misfortune.

His experience in life was varied. He was brave and indefatigable in poverty. He was equally so in wealth. He never exhibited that vulgar meanness which characterizes so many men who were not born to riches, and to whom the acquisition of money is simply an additional gratification of their love of power.

He was born at Schenectady in 1824. He was graduated at Union College in 1842. His purpose then was to become a civil engineer. He studied for a year at the Rensselaer Polytechnic Institute, and in 1843 went to Milwaukee, then a small town. His first preferment was to become postmaster of that place. He surveyed a large portion of the state of Wisconsin, but a fever drove him home; and while recovering from sickness he determined to rise to higher distinction than the profession of his first choice opened to him, and he began the study of the law at Schenectady, in the office of Platt Potter, afterwards a judge of the Supreme Court of this state. He supported himself for a year by teaching in Union College, and in 1845 he went to New York City, and was for a time in the office of Hiram Barney, afterwards collector of the port. In 1848 he was admitted to the bar.

This was a year of change in New York. The Court of Chancery had just been abolished. Jurisdiction at law and in equity had been vested in one tribunal. The Code of Procedure went into operation. The old forms of practice and pleading were thrown aside for a new and untried system. A man of Mr. Potter's adaptiveness could not have come

to the bar in a more fitting time. He won his spurs in the innumerable practice motions which sharpened the wits of the lawyers of those days, and which Mr. Howard recorded in many a volume of *Reports*.

But it must not be thought that his professional skill was limited to this. He could do small things well, and he did not despise them. But he had mastered the deep things of the law. He knew cases, but he was not a mere case lawyer. That process of induction by which, out of many decisions, the controlling principle is developed by careful analysis, was familiar to him. He had prepared for the contests of the bar by thorough study, and by engaging with other students and young lawyers—one of whom (John E. Burrill) has since risen to the front rank in the profession—in moot courts. Here novel questions of law were debated, and each learned from the other. If the professors of the law schools of New York will pardon a suggestion—in which you will all, I am sure, agree—I would say that these forensic discussions are as important to the student as lectures or text-books. It was justly said by an eminent lawyer, that a man never knows a thing thoroughly until he has told it to another.

In 1852, Mr. Potter married, and added the wealth of his wife to his own professional income. But while his easy circumstances enabled him to avoid some of the drudgery of the bar, he maintained and increased his high reputation as a lawyer, and continued in active practice, with but little interruption, until 1868.

One of the important cases in which he was retained illustrates the fertility of resource of which I have spoken. A sharp contest was going on for the control of the Atlantic Mail Steamship Company. As the day for electing directors approached, it became evident that the election would depend upon the vote of one block of the stock. With this,

Mr. Potter's clients would have the majority; without it they were in the minority. They secured the support of the holder, and then it was suspected that the opposite party would, on some pretext, procure, at the last moment, an injunction from Judge Barnard, prohibiting the inspectors from counting the vote of this stock, and that thus they expected to secure a triumph. Many eminent counsel were associated with Mr. Potter in this case. The manœuvre which won the day was no doubt the result of a conference between them; but I believe it does them no injustice to say that he was the author of the suggestion. A bill was filed in the United States Circuit Court alleging the impending danger, and praying that the inspectors of election be enjoined from counting or declaring the vote until the controversy as to this particular block of stock should be decided. Judge Blatchford granted an injunction in accordance with the prayer of the bill, and the victory was won.

It is difficult to realize that the rights of citizens of this state were for years at the mercy of judges as arbitrary and corrupt as a Turkish pacha.

In 1868, Mr. Potter began his political career. In that year he was elected to Congress from the Westchester District, and with an interval of one term, was a member of the House of Representatives for ten years.

During his first three terms his party was in a minority in the House. During the remainder of his official life it was in a majority there, but with an adverse Senate and Executive it could not of course control legislation, and his skill and foresight had not the same scope which under different circumstances they would have had. But he won an enviable position; and had he not, in October, 1874, declined a re-election, would in all probability have been the Speaker of the House in 1875—a position in importance and power second to the Presidency alone.

The ten years during which he sat in the House were periods of great activity. There is hardly one of the questions which fill men's minds to-day, upon which we may not learn some lessons of practical wisdom from his recorded speeches. They are short, pithy, forcible. They are his best memorial. They lie scattered in pamphlets here and there. Like the labor of most of us, the record is fugitive. Let us arrest its flight and listen to it for a moment.

And first of all, the great epoch in his public life, as it was in the life of all Americans, was the war. The bitterness engendered by that struggle has almost entirely passed away. There was a time when it was intense. Here was a man who from the first knew how to unite fidelity to his convictions with magnanimity toward his foes. Listen to what he said at the close of the war, on the 4th of July, 1865:

"I congratulate you, fellow-citizens, on the return of peace. I join with you in rendering devout thanks to Almighty God, who alone maketh men to be of one mind in a house, that it hath pleased him to appease the tumults amongst us, and to restore rest again to this people.

"For the first time in four years this glorious anniversary is welcomed throughout an entire and united land. From ocean to ocean, from the great lakes to the gulf, in all this vast continent we hail once more but one flag and one authority—the flag and the authority of these United States.

"How vast the labor, how mighty the efforts of these past four years, we do not ourselves, I think, fully realize. Trusting in peace, neither ready nor anxious for war, this nation raised and sent into the army and navy within that space *over two millions* of men; most of them, too, voluntary enlistments. For these armies, vast beyond all precedent of modern if not of all warfare, she created all the equipment, the munitions, the artillery, the transportation, and the supplies; has armed them, furnished them, fed them, clad and supplied them

with a liberality and abundance heretofore unknown in the experience of armies. She has found within herself alike the generals to organize and to lead these vast forces. She has, at the same time, created and supported an immense navy, and maintained beside a blockade beyond precedent in its extent and efficiency. For four thousand miles of coast she has kept frigates off every port, ironclads before every fortress, gunboats in every bay and inlet. By every river she has pierced and threatened the territory of the enemy. And yet, with all these marvelous efforts, there has been no disturbance in the ordinary avocations of our lives at home. The fields have been tilled, the harvests have been gathered, the products have been transported, manufactures have been maintained, and trade, business, and education continued with all the regularity of profound peace. Not only has there been no stinting nor suffering, but, as a whole, there has, I think, not been even much more frugality than usual. The luxury and expenditure of our great cities—where it was predicted the grass would grow—has even (I regret to say) surpassed all former extravagance.

“Now, when one reviews all this prodigious national effort—and I do not recall in all history so grand an exhibition of power and dominion—when he recalls the immense domain of his country, the marvelous fertility of its soils, the vastness of its manufacturing resources, the wealth of its mines, the extent and perfection of its means of intercommunication; when, too, he remembers that this great war, from which we have just emerged, was carried on by this people from a profound conviction alike of its necessity and justice—not for cruelty, not for conquest, but, as they believed, to maintain law, preserve freedom, and establish justice—and that through their convictions of right, their fortitude, and their power alone it has succeeded; I repeat, that whatever may be a man's notion of this war, however he may doubt of its

wisdom or its right, he must be more than mortal if he can this day lay his hand upon his heart and not feel proud to say, I too am an American citizen.

“To-day, then, more than ever before, from every spot in this glad land, there go out shouts of victory and thanksgiving. The laborer no longer dreads the draft; the farmer no more fears the raid; the slave no farther drags the shackle; no longer is to be borne the annoyance of delay, the mortification of defeat, the sad suspense, the racking doubt: no more will come long lists of the wounded, the sad story of the prisoner, the agonizing cry of the bereaved; no more, too, I trust, the arbitrary arrest, the government spy, the military trial of civil offenses. We have passed, at last, out of the shadow of defeat into the light of certain and assured triumph, and over all this land there smiles again, thank God, the long sought peace.

“It is suggested that treason to the Republic should be punished, that future treason may be prevented. But has it not been punished? Pray think what the South has suffered—how her fields have been ravaged, her stores spent, her dwellings and fences and bridges and roads destroyed, her towns laid in ruins; how for years her people have borne anxiety, alarm, privation, and distress; how all their prejudices have been crushed, their hopes blasted, their principles failed to be justified. Go watch the aged men tottering about the Southern towns; the sad women clad in scanty weeds; the few young men, maimed, ragged, worn, and miserable. Remember that in every house there has been one dead, that every family has been bereaved and every heart wounded; that they can have no memories but must bring grief and remorse, and but small hope for the future: and say what mightier punishment can be brought upon a people.

“In the same lofty spirit, too, the man whose post in this war was the first, and who has been called to add to that

glory the crown of a martyr, exhorted his countrymen: 'With malice toward none, with charity for all, with firmness in the right, as God gives us to see the right; to strive to finish the work we are in, to bind up the nation's wounds, to care for him who shall have borne the battle, and for his widow and his orphans, and to do all which may achieve and cherish a just and lasting peace among ourselves and with all nations.'

"To such noble words nothing can be added. For when the heavenly host appeared to the shepherds at Bethlehem, they too joined to their shout of 'Glory to God,' only the holy cry of 'Peace on earth, good-will toward men.'"

The same temperate judgment, the same love of country which shine in this address he brought to the discussion of two important subjects which to-day have more interest for the American people than any other connected with our government—the power and growth of corporations and the reform of our civil service.

The anti-monopoly cry which, with more or less wisdom, is uttered in so many places—what is it but the expression of an ill-defined dread lest the combination of the capital of many, under the management of one, may prove too powerful for the rights of the individual? The mightiest corporation the world ever saw was the British East India Company. From a mere trading association it grew to a sovereignty; raised armies and navies, and bore sway over a territory a hundredfold larger than the Mother Country, till at last it became necessary to transfer its powers to the British Crown. With that respect for law which marks the American character, we conceded, almost from the first, a protection to vested rights which the law of England never knew. This we owe in large degree to Mr. Webster and the Dartmouth College case. It is not amiss, while we are speaking of one great lawyer, to recall the work of the

greatest of them all. Let it never be forgotten that the same convincing logic and creative intellect which, in the case referred to, established security for chartered rights in the equally able argument in *Gibbons and Ogden*, vindicated the liberty of the individual, and broke down the monopoly which the state of New York, in gratitude for the steamboat, had granted to Fulton and his associates.

Our friend whom we commemorate to-night combined in like degree respect for vested rights with a determination that the freedom of the citizen should be maintained. Our corporations must be guarded by law; but they must also be subject to law. The spectacle that may be witnessed every night in the city of New York, of a guard of policemen protecting a portion of one of our public parks from robbery by a railroad company abundantly able to buy all the land it needs for its stations, may well awaken alarm.

The two topics I have referred to were ever united in Mr. Potter's thoughts. The danger from the power of combined capital, the danger from Executive patronage, intensified each other.

In a speech delivered twelve years ago, on a bill to grant additional privileges to the Northern Pacific Railroad, he said :

"Mr. Speaker,—I am opposed to this bill; not because I do not think that the government may sometimes wisely donate liberal portions of its public domain to aid in the construction of these great public works, but because I believe no such great corporation as this Northern Pacific Railroad should be allowed to exist in any state, and least of all in any free state. Here is a concern that is to control a strip of territory eighteen hundred miles long by one hundred and twenty miles wide; and, not satisfied with that, it comes here to-day and asks permission to control a branch which (as the gentleman from Kansas—Mr. Clarke—has well said)

may be as long as the original line. In my judgment, sir, no such creature as this—either as it was originally chartered, or as it will be if this measure shall pass this House—can safely exist in any government, and least of all in this government. We see day by day the dangers which follow from the consolidation of corporations which already exists in the state. It would, in my judgment, be wise legislation, were it within the scope of the constitutional authority of Congress, to check the aggregation of these great corporations. It will, in my judgment, be most unwise legislation for Congress to give away its public domain in order to create a creature which in time will grow to be greater than the state itself; a creature existing but by virtue of law, without soul or conscience; a creature which in time will combine with other creatures of the same description to overthrow whatever freedom may be left in this country.”

Shortly after, he thus touched upon the other evil which equally shared his consideration and concern:

“I appreciate the difficulties which necessarily surround the whole subject of civil service reform; but however great those difficulties are, any step in the direction of such reform is one I am willing to support. I believe nothing can be worse than the system which now prevails; nothing worse in its effect upon those employed by the government; nothing worse in its effect upon those who procure them to be employed; nothing worse in its effects upon the country.

“Hardly, indeed, had Mr. Lincoln been sworn into office as President, before (as the gentleman from Vermont told us yesterday) he found the office-seekers of this new Republican party about him in such flocks that, at a time when the exigencies of the government were so pressing, when one-half the country was in revolt, the Commander-in-Chief of the armies of the Republic was not, as he himself declared,

left at liberty to attend to those great public duties which then demanded his utmost attention and care."

Recurring again to both subjects six years later, he thus addressed the alumni and students of Roanoke College, Virginia:

"But beyond the difficulties arising from a crowded population, unequal distribution of wealth, and enormous combinations of industry and capital, to which I have referred, many grave and positive evils confront us. On every side corruption prevails. It has found place in the legislatures of the principal states, and has even, on some occasions, entered the Congress itself.

"In a country whose founders intended to prevent privileged classes—where they forbade hereditary titles, orders of nobility, continued accumulations of property and entailed estates—we have created corporations that hold vaster estates and are more powerful than any foreign nobility—artificial persons, which never die, and which, while they continuously exist, having neither conscience nor feeling, are liable always to pervert and abuse their powers.

"We have a civil service, in which over 100,000 persons hold their places at the absolute will and disposal of the President, and so entirely partisan in its character as to give rise everywhere to grievous complaints and grievous evils.

"None of these evils existed or were foreseen in the time of our fathers. They are the result of the growth of the country in numbers and wealth, and the corresponding increase in public gifts and places and patronage; and they require other remedies than any which the fathers have provided.

"Belligerents may agree, before the battle, that certain things shall not be spoils of war, and then the victor will not so treat them; but no one need expect the victor to abandon to the vanquished the very thing contended for. All our real reforms have come, not from having one party

give up to the other what it has by great effort just wrested from its opponent, but by both parties agreeing, in advance of the strife, that, in future differences, neither party shall exercise the objectionable power. It is only limitation upon the future exercise of power that is practicable."

I should not do justice to his manly and patriotic course in Congress if I omitted to mention that he uniformly maintained the duty of the United States to distribute the Geneva award according to the decision of the tribunal of arbitration, and that none of the plausible schemes for using it to pay claims which that tribunal rejected ever found favor in his eyes.

The mention of his political career leads me to recur to two of his greatest legal arguments—those in the gold contract and in the legal tender cases. In opposition to numerous adverse decisions in the courts of first instance, he vindicated the right of every person holding a contract for the payment of money in specie, to be paid according to his bond. He argued the legal tender cases when they were first heard and decided; and when afterwards a reargument was ordered, he had the honor of being named by the court to present, in opposition to the Attorney General, the argument against the validity of the legal tender clause of the act creating a government paper currency.

The change in the constitution of the court excited general apprehension. He felt that he stood in the breach, and he put forth all his strength. His argument will well repay perusal. It would be hard to find a clearer or more logical statement of the relations of the government to the currency, and of the limitations placed by the Constitution upon the powers of Congress.

And now let me conclude this memorial with an extract from an address delivered by him in 1873, to the graduating class of the Albany Law School. His description of the true lawyer, well and truly present his own character.

“ No man, believe me, will make a great lawyer who has not at bottom a sound moral sense ; whose instinct does not distinguish between justice and injustice ; who can maintain, with equal willingness and equal indifference, right and wrong. Not but that, carried away by the ardor of action, by the sympathy for clients, by the earnestness for success, we often misjudge what the right is, and act with honest but mistaken zeal. It is not such well intended and natural error to which I refer, but to that feeling which confounds the ends of the law, and treats what can be accomplished as permissible, and what succeeds as right. Such men may make smart and active and even successful lawyers ; but they never make really great ones, nor leave behind them those memories which consecrate and elevate the profession.

“ Rightly understood, the law is a most grand calling. It is, as Dr. Johnson said, that science in which the greatest powers of the understanding are applied to the greatest number of facts. To it are committed the protection of the innocent, the punishment of the guilty, the vindication of truth, reason, and equity, the detection and conviction of fraud, injustice, and wrong. Upon its profession and practice depends, in the main, the due administration of justice ; and upon the due administration of justice depend the safety and welfare of the state. For where justice is wisely and firmly administered, there will order be preserved, life be secured, and rights protected. And so far as justice may fail to be administered wisely and firmly, so far will disorder, insecurity, and wrong prevail. It is, besides, upon those who profess the law that the community must rely for sound and faithful counsel in all the complex questions affecting business, and property, and life. Their just and humane influence, rightly exercised, will prevent strife, allay passion, restore peace, stay extravagance, and restrain speculation.”

SOUTH CAROLINA.

GEORGE RIVERS WALKER.

George Rivers Walker, of the Charleston Bar, son of the Hon. H. Pinckney Walker, H. B. M. Consul at Charleston, died at his residence in that city, February 21, 1882, in the thirty-fifth year of his age.

Mr. Walker was born in Charleston on December 11, 1847, and was educated at the city high school and afterwards at Tunbridge, England. Upon his return from England he entered the law school of Harvard University, where he was graduated. At the time of his death he was the senior member of the firm of Walker & Bacot. The firm was formed ten years ago, and neither member has had any other professional connection since his admission to the bar. Depending entirely on his own exertions, Mr. Walker worked assiduously in his profession, and, for so young a man, had a fairly remunerative practice. He had decided ability as a lawyer, as was evinced in his management of the case of the claimants whom he represented before the mixed commission appointed to adjudicate claims growing out of the Civil War. Mr. Walker's management and analysis of the testimony relating to the burning of Columbia and his arguments were highly commended. The evidence and argument were published by the British Government.

Mr. Walker represented the county of Charleston in the legislature from 1878 to 1880, and for several years was Democratic chairman of Christ Church parish.

VERMONT.

CHARLES N. DAVENPORT.

Charles N. Davenport was born at Leyden, Franklin County, Massachusetts, October 20, 1830, and died at Brattleboro, Vermont, April 12, 1882. His early education was in the common school and academy. He studied law with Oscar L. Shafter at Wilmington, Vermont, and was admitted to the bar of Windham County Court at April term, 1854, and was a partner in business with Mr. Shafter until the latter removed to San Francisco, California, where he became one of the judges of the Supreme Court of California. In 1868, Mr. Davenport removed to Brattleboro, Vermont, where he remained until his death. In an obituary notice of him by Hon. Kittridge Haskins, United States District Attorney for Vermont, it is well said of him: "Mr. Davenport seemed to have been born with an inspiration for the law. He was studious, painstaking, and ambitious to become great in his profession. He early took a leading position at the bar, and maintained it during his almost thirty-eight years of constant toil. * * * He was thoroughly devoted to his profession, and in his cause and client he earnestly believed. * * * He possessed a logical and discriminating mind, an easy flow of language, and his manner of expression was plain and simple, which rendered him a successful lawyer and advocate both before the court and jury, and all who heard him listened with pleasure and profit. He commanded a large clientage, and in their service he overtasked both his physical and mental powers, which brought on the disease which, in the end, caused his death." Mr. Davenport was twice married. He survived both unions, leaving two children surviving him. In politics he was a

Democrat, which allowed him no political promotion in Vermont, though his name was occasionally used by his party as a forlorn hope. He was independent in his opinions, and was free in his criticisms of all parties.

ABRAM B. GARDNER.

Abram B. Gardner was born at Pownal, Vermont, September 2, 1819, and died at Bennington, Vermont, November 23, 1881. He graduated at Union College in 1841; studied law with his uncle, Isaac P. Wright, at Carleton, Vermont; was admitted to the bar of Rutland County Court at its April term, 1844, and to the bar of the Supreme Court in Bennington County at its February term, 1847. His whole professional life was passed at Bennington. He held many offices, and graced them all with efficient and faithful service—as Register of Probate, State Attorney, Representative in the General Assembly for five years, for two of which he was Speaker of the House, state Senator for two years, Bank Commissioner for the state, and Lieutenant-Governor for two years. As a lawyer he ranked among the first in the state, having a large and successful practice. He was always truthful and honorable in speech and conduct, both as a lawyer and citizen, and so he secured universal respect and esteem. He was possessed of a sound judicial judgment and common sense—a better equipment, oftentimes, than the highest technical learning. He had a fine presence, and was a forcible and effective speaker.

APPENDIX.

ADDRESS
OF
FRANCIS KERNAN,
PRESIDENT OF THE ASSOCIATION.

GENTLEMEN,—The Constitution of our Association provides that at each Annual Meeting the President shall communicate “the most noteworthy changes in statute law on points of general interest made in the several states and by Congress” since the preceding Annual Meeting.

In nearly two-thirds of the states of the Union the regular sessions of their respective legislatures are biennial only. In these states there has been no regular session of the legislature, and hence no important changes in their statute laws since your last meeting. I have examined the statutes enacted during the past year in the states in which sessions of the legislature have been held, and also the reports made to me by the members of our General Council from those states, and I do not find that many changes in their statute laws on points of general interest have been made.

In Georgia, acts have been passed requiring all acceptances of bills of exchange to be in writing, and also that all conditional sales of personal property (except as between the immediate parties) shall be in writing and be recorded.

In New York a statute has been passed providing that no new promise made by a person duly discharged in bank-

ruptcy from his debts shall revive such debts unless such new promise be in writing, signed by the person to be charged thereby.

New York has enacted that where advances of money to an amount not less than \$5,000, repayable on demand, are made upon warehouse receipts, bills of lading, certificates of stock, certificates of deposit, bills of exchange, bonds, or other negotiable instruments pledged as collateral security for such repayment, it shall be lawful to receive or to contract to receive and collect as compensation for making such advances *any* sum to be agreed upon in writing by the parties to such transaction.

A statute has been passed in Georgia whereby it is provided that the concurrent verdict of *two* juries at different terms of the court shall be necessary to authorize a decree of absolute divorce. The same state requires the decree of divorce to restore to the wife, where the decree is in her favor, her *ante-nuptial* name.

In Georgia, judges now, upon the request of the jury, *must*, in all *civil* cases, furnish the jury with written instructions as to the form of their verdict.

Massachusetts has authorized women to be admitted to practise as attorneys-at-law on the same terms as men.

In several states, acts have been passed directing that seats be provided for car-drivers and female employés. Mississippi has passed a law authorizing persons charged with crime to testify in their own behalf. Acts have been passed in Massachusetts and other states to prevent the adulteration of food and drugs, and making such adulteration a penal offense.

In many states, stringent license laws have been enacted. In Georgia it is now a penal offense to employ minors in any place where liquors are sold by retail to be drunk on the premises.

In New York the chairman of a political caucus, held for the purpose of selecting candidates for office or delegates to a convention, may administer an oath to a person offering to vote at such caucus who shall have been challenged, and interrogate such person under oath as to his name, residence, and qualifications as a voter, and the person answering shall be liable to conviction for perjury if he intentionally makes false answers.

Georgia declares incompetent as election managers all persons unable to read and write, and has also passed an act punishing the purchase and sale of votes at elections. Voluntary assignments by insolvent debtors made hereafter in Georgia for the benefit of creditors are void unless accompanied by a sworn inventory and schedule of all the assets of the assignor.

South Carolina and New York have enacted laws in regard to the regulation and management of railroads, and providing for the appointment of railroad commissioners.

In Connecticut, a married woman may now be an executrix, administratrix, trustee, or guardian the same as a *femme sole*.

New Hampshire has passed a law declaring that any town in that state may exempt from taxation materials of wood, copper, iron, and steel used in the construction of ships and vessels. That State also exempts from taxation as personal estate all ships and vessels engaged in the foreign carrying trade, and declares that only their net yearly *income* shall be taxable. Enactments of this character are worthy of the special consideration of other states, as tending to promote shipbuilding and to increase our merchant marine.

The constitutional right of convicts to worship God according to the dictates of their own consciences, has been recognized and protected by law in New Hampshire.

In several states where there has been *no* regular session of the legislature during the past year, *special* sessions have been *called*, and the state redistricted for congressional representation. Such action is in marked contrast with those states in which *regular* sessions have been held, and adjourned without redistricting the state. Acts for the registration of voters have been passed in Maryland and other states.

In Virginia, punishment by stripes has been abolished, and the right of a prisoner to testify in his own behalf in criminal cases has been extended from assault and battery to felonious and malicious assaults.

In the city of Baltimore, jurors to the number of seven hundred and fifty are hereafter to be annually selected by the five judges of the Supreme bench of that city; and from the jurors so selected, the judges shall select the grand jurors, and the sheriff shall draw the other jurors.

Maryland and New Hampshire have appointed commissioners to examine and report as to the destruction of forests.

In Rhode Island it is provided that the board of persons imprisoned on original writ, *mesne* process, or execution, shall be paid in advance at the rate of three dollars a week by the party at whose suit such person is imprisoned; and the amount so paid shall become part of the costs of the proceedings. In case of default in such payment, the prisoner is to be discharged. That state has provided for the appointment of a commissioner to inspect dams and reservoirs, with power to order repairs and alterations therein, and to cause the water to be drawn therefrom, and with whom must be filed plans and specifications for all new dams and reservoirs. In that state a general act has been passed in reference to supplying towns with water. An act has also been passed by that state providing for administration on the estates of persons who have been absent from the state and not heard from for seven years.

Wisconsin has repealed the "anti-treat law," referred to by your President a year ago. In that state, deceptive advertisements by insurance companies are prohibited, under penalty of a revocation of their license to transact business in the state. In Wisconsin it is also provided that the friends or relatives of a person adjudged insane may execute the warrant of commitment and be paid fees therefor in the same manner as if executed by the sheriff.

In Georgia the penalty for taking or reserving usurious interest is the forfeiture of the excess of such interest above legal interest.

In West Virginia a divorce *a mensa et thoro* may now be had where either party, after marriage, becomes an habitual drunkard. That state also gives statutory forms for indictments for murder and certain other offenses. In that state, damages to the extent of \$10,000 may now be recovered by the representatives of a person whose death has been caused by the wrongful act, neglect, or default of another. That state also declares that if a devise be made to two or more persons jointly, and one or more of them die without issue, the part of the estate so devised to him shall not go to the other joint devisees, but shall descend and pass to the heirs-at-law of the testator as if he had died intestate, unless the will otherwise provide.

Ohio has enacted the following law :

SECTION 1. *Be it enacted by the General Assembly of the state of Ohio,* That Section 7,014 of the revised statutes of Ohio be amended so as to read as follows :

Section 7,014. Whoever assigns or transfers any claim for debt against a resident of this state for the purpose of having the same collected by proceedings in attachment in courts outside of this state, or wherever, with intent to deprive a resident of this state of a right to have his personal earnings exempt from application to the payments of his debts, sends out of this state any claim for debt against

such person for the purpose aforesaid, where the creditor and debtor and the person or corporation owing the money intended to be reached by such proceedings are within the jurisdiction of the courts of this state, shall be fined not more than fifty or less than twenty dollars; and the person whose personal earnings are so attached shall have a right of action, before any court of this state having jurisdiction, to recover the amount attached and any costs paid by him in such attachment proceedings, either from the person so assigning, transferring, or sending such claim out of this state to be collected as aforesaid, or the person to whom such claim is assigned, transferred, or sent as aforesaid, or both, at the option of the person bringing such suit. The assignment, transfer, or sending of such claim to a person not a resident of this state, and the commencement of such proceedings in attachment, shall be considered *prima facie* evidence of a violation of this section.

SECTION 2. This act shall take effect and be in force from and after its passage.

Passed March 8, 1882.

In that state it has been enacted that whoever publishes any false or malicious libel, imputing unchastity to any female of good repute, shall be punished by fine or imprisonment.

Under the new criminal code of New York, new trials can be granted by an appellate court, even where no objections to evidence were taken. An appeal on the part of a prisoner under sentence of death in New York, while pending, operates as a stay of the execution of the sentence. In New York, justices of sessions, or side judges, no longer form a part of the Court of Oyer and Terminer.

In Ohio the following is now the law :

An Act to Supplement Section 6,934 of the Revised Statutes of Ohio.

SECTION 1. *Be it enacted by the General Assembly of the state of Ohio,* That the following be enacted as supplementary

to Section 6,934 of the revised statutes of Ohio, with sectional numbering as follows :

Section 6,934a. That whoever contracts to have or give to himself or another the option to sell or buy, at a future time, any grain or other commodity, stock of any railroad or other company, or forestalls the market by spreading false rumors to influence the price of commodities therein, or corners the market, or attempts to do so in relation to any such commodities, shall be fined not less than \$20 nor more than \$500, or confined in the county jail not exceeding six months, or both; and all contracts made in violation of this section shall be considered gambling contracts, and shall be void; *Provided*, That the provisions of this law shall only be held to mean and apply to such contracts where the intent of the parties thereto is that there shall not be a delivery of the commodity sold, but only a payment of the differences by the parties losing upon the rise or fall of the market.

SECTION 2. This act shall be in force from and after its passage.

Passed April 15, 1882.

The character of state legislation is very important. The Constitution of the United States delegates to the Federal Government certain governmental powers essential to the common defense and general welfare of all the people of all the states, and by the same instrument the states are prohibited from exercising certain governmental powers. All other powers of government are reserved to the states respectively, or to the people. Therefore, the protection of individual rights and the prosperity of the people of each state depend largely upon state laws and their administration. If the state enacts just and wise laws, has good courts, and enforces honesty and economy in the administration of state and municipal affairs, the people will be contented and prosperous. If this is not done, the mass of the people of the state will suffer. Whatever we, as citizens of our respective states and as members of this Association, can do to aid in making the

legislation of the states what it should be, we ought to do. The danger is not that there is or will be too little state legislation. The tendency is to legislate too much.

An examination of the volumes of state statutes enacted at each session of the legislature shows that often changes are made in the existing laws of the state which do not improve them, and that in many of the states there is at every session of the legislature a large amount of special and local legislation. The existing statute and common law of a state should not be changed except where there is a plain defect, and then it should be amended by a statute clearly expressed and drawn so as to remedy the defect and to make no other change. This will tend to promote stability and certainty in the law; will prevent litigation and relieve the courts from a great deal of labor. It will also aid to prevent what has become in some states a great evil—the procuring by individuals or by a combination of parties the enactment of statutes changing general laws for private and special purposes. If legislatures would enact statutes changing the general laws of a state only where experience had shown that such laws were defective, there would be much less state legislation. In many of the states all charters for railroad, banking, insurance, manufacturing, and other business corporations are granted by special acts. This imposes great labor on the legislature, and consumes much time. It brings around the legislature influences which too often procure special privileges which are detrimental to the people of the state. I would suggest that the policy which prevails in some states, by which general laws are passed, under and by virtue of which individuals can organize these corporations, is a wise policy. It obviates the necessity of a great deal of special legislation, and it relieves the legislature from the importunities of those who seek special charters conferring corporate franchises and special privileges not open to

all. In 1838 a general law was passed by the legislature of New York, under which individuals could organize corporations to carry on the business of banking. By the constitution of New York, which took effect on the first day of January, 1847, it was declared that "corporations may be formed under general laws, but shall not be created by special act except for municipal purposes, and in such cases where, in the judgment of the legislature, the objects of the corporation cannot be obtained under general laws. All general laws and special acts passed pursuant to this section may be altered from time to time, or repealed." In accordance with this constitutional provision, the legislature of New York has enacted general laws, under which corporations may be and are created to carry on almost all kinds of business enterprises, for which associated capital and corporate powers are deemed necessary or desirable. It is believed that this policy has been advantageous to our state and given satisfaction to the people. Much special and local legislation may also be done away with by conferring, by general laws, upon the people of municipalities, power to manage and regulate their local matters. The people of a county or town can, by their own local officials, elected by themselves, exercise many of the powers of local government more wisely than a state legislature.

The necessity for an annual meeting of a state legislature is not apparent to me. The reasons which made it important at one time to the mass of the people of England that there should be frequent meetings of Parliament, do not apply to our state governments. The people of these states do not require annual sessions of their state legislature to protect them from oppression or illegal exactions. The powers and duties of the executive officers of the state governments are prescribed by constitutional provisions and statutes. The court can arrest usurpation and punish illegal action on the

part of executive officers. The legislature can without difficulty provide and appropriate the necessary moneys for the ordinary expenses of a state government for two successive years. In most, if not in all, of the states, provision is made, by constitution or statute, for the calling of extra sessions of the legislature, should there be any pressing necessity.

ANNUAL ADDRESS
BY
ALEXANDER R. LAWTON.

MR. PRESIDENT AND GENTLEMEN OF THE ASSOCIATION:—
My distinguished predecessor, on this platform, whose loss we now so sadly mourn, thus closed his address just a twelvemonth since:

“We cannot, then, too highly honor those who, by long life and great gifts and opportunities, have been permitted to adorn the administration of the law and our profession. We owe it to our high calling, to the cause of good government and right living, to see justice done to their services, to cherish their names, and to keep their memories green.”

Accepting this as a voice from the grave of our departed friend and brother, let us follow in his footsteps, and endeavor to rescue from oblivion the names and services of some of the great and good of our profession; at least to see that they do not disappear before their time among those “*Lethean shadows*,” which finally must embrace us all.

It was but natural that my predecessors, in this task, should have presented for your consideration the names of the men of our profession who had made their lives famous and illustrated their country while occupying and adorning the judgment seat, and dispensing justice under the high sanctions of power and place; or of those whose fortune it had been to assist in giving to the country its fundamental law—the framers of our Constitution. But we meet here as the representatives of the American *Bar*, and should see to it that oblivion is not injuriously anticipated in the case

of those who have ministered at the altar of justice with more than their share of learning, ability, and success, but without the possession of such national office and honors as to give them a place in the public history of the country. Should we not seek out, from our own personal observation, as well as from tradition, the names and services of those of our profession who have given tone and character to its ministrations, even though their talents were mainly expended upon the controversies of individuals, and seemingly transitory affairs, and were not made conspicuous by the bestowal of national honors and the exercise of functions thus derived? For it is painfully true, that after the lapse of a very few years scarcely any trace can be found of the services rendered to the state, to society, and to the cause of truth and justice by the very best of our profession; while history records and the public voice resounds with the services of men greatly their inferiors, whose fortune it had been to "lead battalions to victory," or, the "applause of listening senates to command."

Take one or two examples: How much of the public history of the country is taken up with the life and services of Chief Justice Gibson, of Pennsylvania, and how many of the younger members of the profession to-day know aught of that great man—except, perhaps, that he delivered many opinions, which appear in many volumes of reports? And yet he presided for twenty-five years over the highest tribunal of that great state, with such transcendent ability and integrity of purpose, that those who were nearest to him almost worshiped him. It was Chancellor Kent who said that he was a "giant in intellect as he was in stature;" and his opinions can safely challenge comparison, for the vigor of his judgments and the purity and force of his judicial style, with those of the most eminent judges who ever sat upon King's Bench or Woolsack. His qualities as a

man, and his overshadowing reputation as a magistrate, were such, that when, late in life, he was superseded* as *Chief Justice*, and a distinguished young member of the bar selected to fill that place, the latter positively declined to claim the central seat, but insisted that his venerable *associate* should still occupy that place—which he did to the end of his life. Graceful and touching tribute! Honorable alike to Gibson, who received, and to Black, who rendered it. Take another example: Theophilus Parsons, of Massachusetts, was Chief Justice of that state for only five years, in the early part of this century, at a most eventful period in the judicial history of that advanced state; yet he made more important changes and far-reaching reforms than were ever accomplished before or since in the same length of time, either in England or America, and gave to the judiciary of Massachusetts a rank and a leadership in the discussion and decision of great questions, which it has never lost to this day. He was also a man of letters and of science of the very first order; so rounded and complete in character and attainments, that Judge Story said of him, he would certainly have been Chief Justice of the King's Bench had he lived in England. But Theophilus Parsons lacked the stamp of national office. How many pages in the public history of the country does he fill? But one more example: Jeremiah Mason practised law first in New Hampshire and then in Boston. He rarely ever encountered his peer, and never his superior. But his brains and energies were exclusively given to the *practice of the law*. How soon will he be forgotten, I fear, even by the profession! And yet Daniel Webster said of him, and said it after he had held converse with the truly great of all America, and of Europe as well,

* By a change in the Constitution of the state, providing for the election of the judges of the Supreme Court, the Chief Justice being selected by lot from among those first elected.

and had touched the height of his own Olympian fame: "I have yet to encounter a greater intellect than Jere Mason." And at another time he said, referring jocularly to the hard blows he had received at Mason's hands: "In no case in which I have encountered him, was I able to dig so deep that old Jere Mason did not dig under me."

In the performance of the duty assigned me, whom shall I venture to select for the purpose of illustrating the relations to community, to society, and to the state sustained by the practising lawyer? Cicero began a celebrated oration by congratulating himself upon the felicity of his subject—and said that an orator could not fail to be more embarrassed in the choice, than the discussion of his topics. But *he* was about to speak of the virtues of "the great Pompey, under whose auspices victory flew with the Roman eagles even to the banks of the Euphrates." I am less fortunate, as I propose to illustrate further the views which I would impress upon this Association, by some notice of the professional life and character of two men whose very names are perhaps unknown to many of my audience—

JAMES LOUIS PETIGRU AND HUGH SWINTON LEGARÉ.

Mr. Petigru was born in 1789, in one of the upper districts of South Carolina, of highly respectable but much impoverished parents. By the father's side he was of Irish descent; by the mother's, he inherited the blood of the Huguenots. This noble people, driven from their homes in the Old World to seek refuge in the wilds of Carolina—not from ambition or hope of gain, but from principle and the love of liberty—have left the impress of their character and motives on their descendants, even to the present day. Of these was the mother of Petigru. When yet a boy he was left to her sole care by the death of his father, and from early infancy to the latest hour of her life he honored and adored

this mother, even more her loving child at fifty years of age than when dependent on her daily care. In straitened circumstances, and living on a farm, the lad worked hard to assist his mother; getting a small amount of education, with some glimpses into Latin and mathematics, from an Irish teacher in the settlement—until he was fourteen years of age. Then a happy circumstance brought him to the notice of Reverend Dr. Moses Waddell, principal of the celebrated Willington Academy, in Abbeville District. Observing his remarkable gifts and intelligence, he said: "If I had you with me, my boy, I would make a man of you," and he agreed to take him to his school on terms dictated by this desire. Willington School was a sort of Rugby of American manufacture, and Moses Waddell a Carolina Dr. Arnold. He had remarkable talents for organization and government; his methods appealing largely to the honor and moral sense of his pupils. Not confined too much in the school-room, the forest was their place of study, and the old oaks and hickories gave the inspiration for classical learning. The horn announced at intervals change of occupation, and the woods echoed with these sonorous signals for recitation or retirement. The methods of living were simple. The school, of two or three hundred scholars, was attended by the sons of the wealthiest and most influential men of the state. It was governed in republican fashion, through monitors, with Dr. Waddell as supreme head and dictator.* The scholars were enthusiastically attached to him, and many of them in after years, when they were grandfathers, spoke of him with rapture. Mr. Petigru, to the end of his life, always referred to him as "my beloved master," and when married would have Dr. Waddell to perform the ceremony. The time given to this sketch is excused by the fact that it was

* See Grayson's Sketch of Petigru.

an important event in the life of Petigru when he was sent to that school; and many of the most prominent men of the state were educated there—not only Petigru and Legaré, but McDuffie, Harper, Capers, Longstreet, and a host of others. He left Willington Academy one of the best scholars it ever turned out, and entered the South Carolina College, at Columbia, to complete his literary education. Still struggling with poverty, he taught school in the Columbia Academy through his whole college course, and yet graduated, in 1809, aged twenty, with the highest honors of his class.

Pressed by poverty and by the condition of affairs of his mother and younger brothers, he decided promptly to go to work as a schoolmaster, and, at the same time, prepare for admission to the bar. While conducting a school in the low country of the state, he made this preparation rapidly and thoroughly, and was admitted to the bar in 1812. A portion of this period of preparation was spent as tutor in the Beaufort College, and his reputation there was such that he came near being elected president, to fill the vacancy which then occurred. Many years later, and when Petigru had attained to the highest professional distinction, his life-time friend, Mr. Grayson, a man of letters, thus laments: "Who can calculate the loss experienced by the college and the state in missing his services? Anybody can make a lawyer or a politician, but where could such a college president be found? In learning, endurance, and activity, in vigor and originality of mind and character, in moral elevation, in fidelity to duty, in commanding authority, in all the attributes by which a teacher would give form to the student—character as a gentleman and a man—where could his equal be found? But the prize was not to be ours."

Gentlemen of the Bar Association, are you prepared to accept Mr. Grayson's estimate of the relative importance of

the two occupations, and to find our profession placed so much lower in the scale than that of the schoolmaster?

Mr. Petigru's entrance upon the practice of his profession fully realized all the hopes and expectations of his friends. With no pyrotechnic display, nor sensation created by the announcement of a "maiden speech;" with courage and earnestness, he performed every professional duty; heart and soul enlisted in every case, whether small or great; not affected by the *éclat* attached to the case, nor to the quality of the client; nor did he stop to inquire whether the immediate profit to result to himself was apparent or not. Thus he moved forward with a steady and a rapid pace. Ground once gained was never lost. His title had been acquired by force of intellect, energy, and truthfulness. From his first entrance upon life he exhibited that genial temper and rare benevolence of character which were afterwards known of all men; and he did not merely practice that common-place integrity, which it is no honor to have, but simply a disgrace to want. He was not only incorruptible, but scrupulously, impulsively, delicately free from all willful wrong in thought, word, and deed. And yet his was an excitable nature, and he had a fiery temper. There was nothing *negative* about the man.

His birth and early training had not specially fitted him for the social life of the planters on the coast of Carolina, where society was accused of being aristocratic and exclusive in its tendencies. But young Petigru was not slow to win his title of nobility, and while yet a poor schoolmaster, struggling to acquire his profession, and without the smallest fawning or loss of self-respect, he was not merely admitted and tolerated, but sought after and admired. And to the end of his days he was the ornament, the delight, the cherished favorite of the most cultivated and refined, the proudest and most reserved society of that state.

His residence and his practice at Coosawatchie, the court house town of Beaufort District, continued for about ten years, when he removed to Charleston, to enter upon larger scenes and more befitting duties. But how he clung to the scenes and the friends of his early struggles, and what an idol he was with those who had fondly witnessed his rise, first to the leadership of the local bar of several contiguous districts, and then to the acknowledged leadership of the Bar of the state! And in after years, when the trial of some great cause would bring him to revisit the scenes of earlier labor, it was simply beautiful to witness the unaffected tributes paid him by the most lowly and the most lordly as well, as they listened to his quaint and genial references to early friends and amusing incidents, or were convulsed by his happy contagious laugh. True and loyal child of nature; improved, but never spoiled by culture, and ever "free from all modishness, sophistication, and art."

It was but a very short time after Mr. Petigru transferred his practice to Charleston, that the way was opened to him, by the election of Robert Y. Hayne to the United States Senate, to succeed that distinguished lawyer in the office of Attorney General of the state. It was then an office of profit, influence, and dignity, and made him the legal advisor of the state authorities, and the official head of the entire bar. His presence was required at the Capitol with the state solicitors, during the sessions of the legislature, and every bill introduced had to be scrutinized by these officials, as to the sufficiency of its form and style, before it became a law, very much after the plan now adopted in the British Parliament, to secure perfection in the wording of its enactments. The consequence was, that the statutes of South Carolina, for a series of years, could challenge comparison with those of any other state, in language and structure, and present none of those ludicrous aspects so happily charac-

terized in a recent address by the distinguished President of the Social Science Association.* It is no mean evidence of the great importance attached to this office of Attorney General, that Petigru succeeded such a man as Hayne, and was, in turn, succeeded by Legaré. Of the latter, more anon. But I cannot dismiss the former without adding that he was not only a very great lawyer, who had achieved the most complete success, at a very early age, but was also one of the most logical reasoners, graceful speakers, and vigorous writers among the public men of his day. A little illustrative anecdote, of which the present speaker happened to be personally cognizant, may be pardoned. When that eminent English geologist, Sir Charles Lyell, was travelling through this country, and naturally "reading up" on American topics, he read closely Mr. Webster's great speech on "Foote's Resolutions," in reply to Hayne. His admiration was without bounds. "But," said he, "where is Hayne's speech, to which this was a reply? It must have been a very powerful effort, to have so put Mr. Webster on his mettle—to have taxed to the full all the resources of his great antagonist, and drawn from him utterances so grand and noble, that they never were excelled, if ever equalled, by him in his subsequent efforts."

The speech of Hayne was found and handed to Sir Charles, who rose from the perusal with the remark: "It is indeed all, and more than I had predicted, and second only to Webster's immortal reply."

COMPEERS OF PETIGRU.

At that time the bar of Charleston was not excelled in ability or attainments by that of any city in the land in proportion to numbers. Having such men to cope with as Hayne, Grimke, and Drayton, Mitchell, King, Bailey,

* Professor Wayland.

and Simmons, Hunt and Legaré, all of the city of Charleston, with occasional onslaughts from such men as McDuffy, William C. Preston, Harper, and others, not only thoroughly equipped lawyers, but men of the highest culture and attainments,—is it too much to say that Petigru had already become a truly great man, when he rose promptly to be the acknowledged leader of the bar of his state?—a position he held for forty years, none bold enough to question his title in all that time! Are we not justified in this presence in summoning him to “come to the fore?”

In the adjoining state of Georgia he frequently met, and had his tilt with, such men as John Macpherson Berrien, than whom no more able and accomplished lawyer could be found in any state, and who, but for the diversion of his talents and energies to the Senate of the United States and other political positions, might well have been looked to to fill the office of Chief Justice of the United States. He (Berrien) is the only instance that occurs to me, except the still more illustrious one of Daniel Webster, where a man holding the highest political offices, running through almost half a century, remained a thorough *lawyer* to the last. And no matter how sudden or how sporadic the transfer from the senate to the forum, he came at once like an athlete stripped for the race; and woe betide the professional brother who hoped for any advantage in the wrestle because Berrien had been so long absent from the arena. Petigru also met Richard Henry Wilde, of Georgia, who was none the less a profound and accomplished lawyer because he was a true poet; *we*, gentlemen, will forgive him for that offense, whenever we read his exquisite verses, as sweet and plaintive as anything that language has produced:

“My life is like the summer rose
That opens to the morning sky,
But ere the shades of evening close,
Is scattered o’er the ground to die.”

I would also gladly speak of Law—the Cicero of the Georgia Bar; of McAllister, of Charlton, and of others worthy of your notice; but may not detain you further on this topic. I felt that our judgment of Mr. Petigru could not have a proper basis without bringing to your notice his associates and surroundings.

THE SECRET OF PETIGRU'S SUCCESS.

At this point it is well to ask the question, Why and how was it that Mr. Petigru achieved such success? How did he so completely and so thoroughly overcome the disadvantages which beset his childhood and early youth, and reach at a bound a position which might have gratified the ambition of any man? Because he was, first a man of genius and of the strongest common sense. Then his preparation was thorough and broad; he made himself a scholar—a scholar of the old fashioned style—a classical scholar, well read in all history and poetry,—before he became a lawyer. And yet his necessities forced him to become a lawyer at the earliest practicable moment, for the “bread-getting” side of the question claimed his earnest attention. But he *must* make bread as a lawyer, and not as a charlatan, even though starvation should stare him in the face.

He had all the tastes and inclinations that would have made him a man of letters, but he had singleness of purpose and resolution enough not to tread the “primrose paths,” and only surrendered himself to his classical recreations when at the midnight hour he had already satisfied the demands of that jealous mistress, the law.

PETIGRU—THE LAWYER.

As a lawyer he read and studied the foundations of the science. As an advocate he thought and reasoned, and only cited cases for the principle which he eliminated from them.

In that class of cases which involved the highest principles of jurisprudence, and perplexed the unlearned counsel and judge, his attainments were especially manifested; and the subtlety and comprehensiveness of his mind suffered nothing to escape him. His reading was great among authorities where ordinary lawyers are less accustomed to look. Such reading, however, became so thoroughly interwoven with, and made part and parcel of his own thoughts and knowledge, that the reasoning flowed from *himself* in an irresistible stream, while he rarely stopped to read the authorities which had given him the power to make the argument.

Yet he recognized the fact that laws must be general in their terms; and that human language, in the most skillfully prepared enactments and judicial opinions, needs to be interpreted. That when this system of interpreting has run through the centuries, and over two continents, in seeking for truth, there are many similitudes from which the advocate must select; and thus only can we convince ourselves, and then the judge, which is the truth and which only its image. It is this imperfection of human language, and the necessity of dealing with these different similitudes to arrive at the very truth, which causes laymen so often to misapprehend the attitude and office of the advocate in presenting his cause. No more vulgar error exists than that which attributes to some of the very noblest and highest of our profession perfect rectitude in their personal relations outside of the court house, and the absence of almost every virtue, especially that of truthfulness, in the conduct of cases in court. I am entirely unwilling thus to separate the *man* from the lawyer. We must be proud of both, or the eulogy is incomplete.

He also knew that there are causes where the decisions have been so numerous, and the distinction so nicely, or so clumsily, drawn, that we must look to the *weight of authority*,

rather than to any other element of value, to secure results. The great case of *Cruger vs. Daniel*, prominent in the reports of South Carolina cases, was one of this class, and involved some of the most intricate and perplexing problems in the law of real property. It became there necessary to multiply, compare, and arrange the authorities, and Mr. Petigru's industry was quite equal to the emergency. One of his brethren relates that he literally "took a cart load of books to the court house."

This peculiar indisposition on his part to be controlled by authorities, especially for the more recent, so grew upon him in later years and declining health that it gave rise to some amusing scenes and incidents—for he had actually ceased almost entirely to read the current decisions of the highest court of his own state. It is related of him that, on one occasion, when he had opened an argument based upon *general principles* entirely, with much earnestness and zeal, and seemed to ignore altogether a decision then recently made to the contrary of the views he pressed upon the court, the Chief Justice thus interrupted him: "Mr. Petigru, of course you know that this court has virtually decided the question you now raise, in the last volume of our reports?"

"Do I understand your honors to say that this question has been decided by this court?"

"Certainly, Mr. Petigru, in the recent case of A against B."

He stopped, dropped his head, looked as cannot be described, but as will be remembered by all who have seen him under like circumstances—indeed trying to look as much as possible like a culprit. The Bar, and the Bench too, knew his wonderful powers of humor and sarcasm, and were quite sure he would not retreat without giving a parting shot.

"Your honors, I deserve the rebuke of the court; but it was my ignorance, not my intention, that caused me to offend; for indeed my reading had not come down *so low*."

This in a tone of voice inimitable—shrill and guttural at the same time. The skillful archer did not miss his mark.

For the last forty years of his life he was engaged in nearly every important cause in his state, on one side or the other, and in nearly all of them he had Legaré with him, or against him, up to the time of the death of the latter. In speaking of the case of *The People vs. Bank of South Carolina*, which excited a great deal of public attention in that state, Chief Justice O'Neil remarked that Legaré's argument was indeed a very powerful one, and would have been even more celebrated in the history of that case, had it not been so far excelled, and almost eclipsed, by the greater argument of Petigru.

He was a man somewhat local in his tendencies; and inasmuch as the means of communication, at the time he entered upon active practice, were not such as to induce counsel at points distant from Washington to follow their cases to the Supreme Court of the United States, he did not acquire the habit of appearing before that court early in life; and when afterwards he was repeatedly urged to go to the Supreme Court, he would modestly reply: "I am but a provincial lawyer, and fear that I could not do you justice there; let me send the case to some one whose powers and eminence are well recognized by that court." And he thus insisted to the end of his life; in all cases except one, where the pressure and urgency was such that he did appear before the Supreme Court, receiving the greatest consideration from that body.

It was happily said of Mr. Petigru, by one of his brethren at the bar, that his love of justice "was as of something incarnate, and he would no more trifle with it than with Deity itself." He kept jealous vigilance over the rights of truth, and resented falsehood in every form, as if a personal wrong. His speech was always couched in language drawn

from the pure well of English undefiled, adhering as closely as possible to the Anglo-Saxon vocabulary, though always a man of literary habitudes, with the ancient classics as familiar to him as household words. Singularly gifted with a power of wit and humor, he relieved the asperities and the tedium of forensic conflict, convulsing auditory, bar, and even bench with his contagious merriment, and with matchless skill applied ridicule and sarcasm as weapons, and tests of truth. But in the liveliest sallies of his wit and humor—the last acts on which benevolence ordinarily asserts its restraining influence—he never allowed himself to trench on the sensibilities of others. He was, in the true old English sense, a *gentleman*—that rare combination of courage, courtesy, and culture, of truth and kindness, with a scrupulous regard for the rights and feelings of others. But as this weapon is sometimes used by the advocate in a way which seems to take an unfair and unmanly advantage of his position, I am tempted just here to quote a sentence or two from that perfect master of ridicule and sarcasm, Carlyle: “There are things in this world to be laughed at, as well as things to be admired, and it is no complete mind that cannot give to each sort its due. Nevertheless, contempt is a dangerous element to sport in; a deadly one if we habitually live in it.

“The faculty of Love, of Admiration, is to be regarded as the sign and the measure of high souls. Ridicule, on the other hand, is indeed a faculty much prized by its possessor, yet intrinsically a small faculty—we may say the smallest of all the faculties that other men are at pains to repay with any esteem. It is directly opposed to Thought, to Knowledge, properly so-called; its nourishment is *Denial*, which hovers only on the surface, while Knowledge dwells far below. Moreover, it is by nature selfish, and morally trivial; it cherishes nothing but vanity, which may in general be left safely enough to shift for itself.”

Mr. Petigru was remarkable for great truthfulness in the citation and application of authorities, and this helped, with his many other qualities, to win for him not only the confidence, esteem, and affection of the bar, but of the bench. Then he was so fair and so far above all trick or artifice in his practice, and especially was he kind and even brotherly in his deportment to the younger members of the profession. Late in life he once remarked with great satisfaction that he had never turned one of them out of court on a mere technicality "because he did not understand his business."

HIS POLITICAL POSITION.

Mr. Petigru's political position was peculiar in this, that his party affiliations were always with a very small minority in his state; and this affected his relations to the public, and necessarily prevented him from ever holding political office; although in one or two instances, for special reasons, he was sent to the state legislature. He was a Federalist of the rankest sort, and was so "from his youth up." All his life he practised and associated with a bar and before a bench differing from him utterly in politics. A man of strong convictions and stern views of duty, he would not even remain silent to gratify his best friend. In all the great political excitements which prevailed in his state—the first in 1830-31, then in 1850, and then from 1861 to the time of his death in 1863—he was separated in opinion from nearly all his best friends. Yet he never lost a single friend in all that time whose friendship was worth the having. Mailed in the armor of honesty, all respected his motives and admired his boldness, while lamenting what they believed to be his errors of opinion. He seemed encircled with an atmosphere of dignity, and armed with some electric power to repel hostile and dishonoring assault.

During the administration of Mr. Fillmore, when the

state of public feeling in South Carolina was such that the United States District Attorney resigned his office, saying that no man could hold it and be loyal to his state, Mr. Petigru stepped promptly forward and took the position, to the great damage of his practice and against the wishes and earnest protests of his friends. In 1861, when his state was about to take the decided step which would sever its connection with the Union, he bowed in humility to its behests, with that antique loyalty which made him share her fate while he disapproved her every act—and when appealed to by a very dear friend not to be so outspoken in his opposition, but to submit to the inevitable, he was silent for many minutes, and then in tones of agony and despair, he said: “I never expect to see another happy moment in my life.” He was intensely conservative in all things; in law, in politics, in religion, in social life. He thought he saw in the great movement that was going on only that love of change and lawlessness which breaks off all habits of submission and support to government, and he could not do more than *submit*.

Notwithstanding this great difference of opinion between Mr. Petigru and the people of his state, which deprived him necessarily of political office, there was no moment of time within the last years of his life that he could not have been made Chancellor or Chief Justice of his state had he been willing to accept either position; and at the time of his death he held the best paid office in the state—an appointment by the legislature, renewed from year to year, to codify the statute laws. I mention this instance of the generosity of that people, because they have so often been charged with intolerance as to all differences of political opinion. And this brings to mind a somewhat similar action, some years before, in the case of William C. Preston. When the difference in opinion between his people and himself had

become so great that he could no longer properly represent them in the United States Senate, he voluntarily resigned his position. At the first moment after his resignation that it was practicable to do so, he was elected to the presidency of the University of South Carolina, an office entirely within the control of the state authorities, and one highly esteemed and much sought after.

HIS DEATH—EULOGIES OF THE BAR.

Mr. Petigru's health began to trouble him seriously in the year 1862, and continued to grow worse until he died, in the city of Charleston, in March, 1863.

A meeting of the bar of Charleston took place soon thereafter, and the outburst of sorrow and lamentation, and of love for the departed, seemed for a time to hush even the noise of battle, for it was at that moment that the war was being waged between the states with all the fierceness that it assumed at any time.

A word or two from the loving tribute of Robert Barnwell Rhett, at that meeting. He was, perhaps, the most bitter and uncompromising, of all that school of public men habitually antagonized by Mr. Petigru: "My tutor in boyhood, my friend in early manhood, my better friend in advanced life, whom neither time nor fortune, private duties nor troubles, nor the angry contests and differences of more than thirty years, ever induced to say to me an unkind word or do an unkind deed. I am here to-day to bear testimony to the bravest and truest of friends. To say that the deceased was a great lawyer, were to say but little of his great qualities; he never was a mere lawyer to his clients—he was a friend, and a sincere friend; and when called on for his counsel, he never stopped at expounding the law merely, but placed before his clients the *duties* their positions required. With him honor was more than property, and he freely and frankly counseled his clients on that basis."

The sentiments uttered on that occasion by his brethren of the bar, exhibited such deep feeling, and great sorrow, and profound respect for the deceased, that could his spirit have hovered over that scene, and caught their notes of lamentation, it would have been to him more grateful than a Roman triumph formally decreed. The speakers, in the warm gush of their affection for the *man*, seemed to have but little comparatively to say of the lawyer.

Listen, also, to some of the language used on that occasion by the Hon. George S. Bryan, since District Judge of the United States.

“We may indeed attempt to measure his mind and fix his rank as a lawyer. But who of us shall sound the depths of his humanity? Who shall measure his large heart? Who shall seek to circumscribe, within strict lines, that great liberal nature which, in its fullness, overflowed all bounds, and poured itself all abroad? Who can describe the delights of his fellowship, and paint the pleasant familiar spirit, so merry and so gamesome? Great and unrivaled was our friend as a lawyer; touchingly, simply, and profoundly eloquent as an advocate; and incomparable as a wit; but how much greater than all these the genial, loving, heroic *man*—James L. Petigru! How tender, considerate, and delicate in the bestowal of his favors! His benefits descended like the dews of night—in silence, without a witness, and were known only by their print and the voice of gratitude, which could not be silenced. The cry of distress was to him as the voice of God. He counted not the cost of his compassion; whether his treasury was full or empty, he gave. He drew upon the future, when he had not, and made good his drafts by toil, often continued deep into the night, and frequently surprised by the first ray of morning. And he gave, not only to the good; it was enough that a fellow-creature should be abandoned, forlorn, and wretched,

to enlist his sympathies and command his aid. And just at the point that the world dropped such a one, and he had not a friend, *he* became his friend, and covered him with the mantle of his protection. It was for the only Judge to judge and to punish; it was for him to pity and to help.

“How touching and sublime his patience under every variety of ills! And he whose instinct it was to give and to aid, himself surprised by misfortune, with what magnanimity did he receive, with what nobler generosity bear obligation, and, after tenfold requital, still owe, and even pursue with service, affection, and gratitude, those who had stood by him in his hour of trial!

“It is a grave error that he was indifferent to opinion and careless of office. He knew well the value of the golden candlestick to the candles, and that a light to be seen must be set upon a hill. No one loved his country and fellow-men with a fonder affection, and craved their recognition and sympathy with a more passionate longing; and no one more than he could feel denial, postponement, exclusion, suppression. He bore them all with manly fortitude, with cheerful submission, without parade — a martyr without affecting martyrdom, defeated but never overthrown. His own individual greatness sufficed to sustain him; but he suffered, and he was willing to suffer, in the cause of justice and truth. As in his charity he was charitable at the cost of ease and wealth and through ceaseless toil, so in his love of country he was faithful at the expense of place, power, and fame. He had ambition. He knew that the mere practising lawyer, though he may be useful, can scarcely hope to escape provincial obscurity, and that his name lives only in the remembrance of the generation he serves and the community for whom he labors. If in an office worthy of his ability and commensurate with his gifts and accomplishments he could have been granted the opportunity of

clothing Right in forms which would have made the world his debtor and commended his name to the great and good of all lands in the profession to which he devoted his life, this would indeed have been with him a crowning consolation, and his cup would have been full. This he had consciously to forego. He knew that the gate to power in the South—the only gate—was through the state. Through that door alone could he reach the country and the world and hope to win the large distinction worthy of his genius. He loved his people better than himself, and he could not subscribe to a creed which he believed would carry death to the country and bring ruin on his state, and without complaint he submitted himself to his limited lot and narrow destiny.”

TRIBUTE OF HUGER TO THE MEMORY OF PETIGRU.

I cannot better close this sketch than by using some extracts from a letter to a friend, written by Alfred Huger—a lifetime friend of Petigru’s—soon after his death.

“ I had implicit confidence in Petigru, and never knew any single man who was as near being an institution by himself. Original in all things, if his character was a mosaic, he furnished the particles from his own resources, wearing such colors as nature gave him, and borrowing none from his fellows. Conscientious and just in matters of truth, he would cavil about a hair. Generous and brave, he would give without measure and ask nothing in return. His probity never was shaken by adversity, and his gentleness and mercy were increased by his prosperity. Elevated in every sentiment, he dealt lightly with those who needed his forgiveness; uncompromising where his own *rights* were assailed, he was sure to put those who denied them at utter defiance. When he was overpowered by numbers he submitted to the *law* but never to the *victor*. He could stand

alone without dismay, preferring always the gratitude of the weak and helpless to the patronage of the powerful and the strong. In every conflict Petigru was himself; when his equals were needed, few answered to their names; and when his superiors were called for, *none* were forthcoming. He knew how to strike the hardest blows, and he knew how to receive them; for he never hesitated to strike when the provocation was sufficient, and he never winced or quailed, no matter how deadly was the returning arrow."

So much time has been devoted to the notice of this most remarkable and most interesting man, that I must turn abruptly to the other name announced for our consideration—

HUGH SWINTON LEGARÉ.

Hugh Swinton Legaré was born in Charleston, South Carolina, in 1797, his father being of a Huguenot family, and his mother a Swinton, of the Scotch family distinguished by Sir Walter in his *Halidon Hill*. Like Petigru, he lost his father when a child, and was left to the care of a widowed mother, who proved worthy of the task of rearing her (afterwards) illustrious son, and was repaid by him with a love and devotion which is the highest reward ever claimed by a true and noble woman.

Up to his fourth year the boy was noted for strength and comeliness of form. But about this time he was inoculated with the small-pox, which so poisoned his whole system that after months of suffering he arose from his bed a wretched skeleton. For eight years he gained hardly an inch in stature, and as the result of this diseased condition, his *body* grew up to a normal size, while the lower limbs were hopelessly stunted, and refused any further growth, though neither weak nor withered.

A dear friend of his thus described his appearance: "Seated, his length of body set off by a broad, manly chest, a

noble head, and an air unusually imposing, he looked of commanding person; but risen, he seemed in a moment to have shrunk out of his bodily advantages."

Thus afflicted and debarred the physical sports of childhood, the lad was driven to seek recreation in books, and with precocious enthusiasm he devoted himself to study. At thirteen he was sent to Doctor Moses Waddell's Willington Academy, the famous school already noticed. His ardent nature was somewhat chafed by the strict didactic system which there prevailed, and he would have left that school soon after he entered but for the wisdom and firmness of his mother. But Legaré often acknowledged, in after years, that to Dr. Waddell he was indebted for the broad and deep foundations of the rich and varied Hellenic learning for which he was so distinguished,—to him the joy and pleasure of his life.

He entered the freshman class of the South Carolina College before he was quite fifteen. Although a new foundation, this college was even then a first-class institution; and it is somewhat remarkable, that although many youths of that state were sent to the best endowed colleges elsewhere, it will be found that nearly all of the most prominent men in every department of life, from the time of Petigru and Legaré up to the recent war between the states, received their education at this home institution.

With boyish ingenuouness Legaré was not backward in having it understood that he intended to claim the highest honors of his class. His previous attainments, and the astonishing facility with which he made further acquirements; his thorough mastery of all the studies of his course, and the devotion of all the intervals of time possible to well selected reading in the college library, soon made it clear that he would carry off those honors without a competitor.

It was here probably that his childish fancy began to assume a definite form and consistency; the future arose

clearly before him, made sacred by the loftiness and purity of the purposes to which it was dedicated. Now the instinct of what he was to be awoke in him and waived him on to enter a career hitherto unattempted in this country—a preparation, the completest brought to bear upon practical life in its most difficult pursuits—“of mastering, by his own labor, learning enough for a lifetime of ambition, accomplishments enough for a lifetime of leisure, and then turning all those to the aid of public performance.” With a thoroughness which was phenomenal, he pursued his studies; especially in Latin and Greek was his knowledge so thorough as to make the spirit of those languages his own, for he always scorned the vulgar ambition to know just enough for a patch-work of flippant quotations. He recognized the truth that whoever learns only what the professors can teach, has but entered upon the threshold of knowledge; that there must be the glow, the ardor, the passion to *know*, so little felt in this age of “improved instruction.” “Where all things come to be easy, great things cease to be performed.” He also commenced the most assiduous cultivation of the art of oratory; read with the minutest care the great ancient masters of harangue, the true models of persuasion—with all that historians and poets contain of eloquence in other forms. One who was a constant eye-witness has thus described the success he attained: “Knowing from the first what all but miraculous charm lies in appropriate and striking action, what an instrument to sway and kindle the remotest depths of man's heart nature has given us in the human voice, he bestowed upon both an elaboration of culture, the ultimate results of which were an elocutionary perfection unparalleled among his rivals and cotemporaries. His articulation became golden in its distinctness; his intonation pure and beautiful as those of Italian song.” Thus trained, his voice became clear, musical, delicate; true in its minutest inflections,

while in its more vehement bursts it grew capable of filling the air with its absolute thunders. He conquered in like manner, or tried to hide, his bodily defects, so as to attain a command of gesture sufficient to second the beautiful recitative of his voice and the play of features, highly oratorical, even in the only part where they deviated from regularity; lips and mouth large, passionate, and scornful; a countenance altogether striking and imposing, lighted up with high intellect and feeling, and fit to mirror all that eloquence can express.

I have thus dwelt upon this stupendous preparation, because it was all brought to, and laid at the feet of, his profession, and all his learning and acquirements only served to illustrate the law and the lawyer. They were but the preparation for the *practice of the law*, according to his theory of what that practice should be—and in this respect he had no model and no peer in this country.

After leaving college he returned to Charleston, the city of his birth, and under his old friend and preceptor, Judge Mitchell King, entered upon a comprehensive course of legal reading, making excursions, however, into the more attractive region of *belles-lettres* and his favorite classics. Was it ambition that impelled him to this course? If ambition, it certainly was of the highest and purest order. Like Petigru, he adopted Plato's motto, "*Esse quam videre*;" he would not *seem* if he could not *be*. He had no desire to avail himself of the art of "rising by contrivance;" his ambition was to deserve, and if to rise at all, to rise by deserving; ambitious of merit rather than of its rewards. To accomplish such results, he asked nothing better for himself than to "scorn delights and live laborious days." How remarkable a resolution! How blessed an example it has left us!

In 1818 he visited Europe, and there availed himself of the instructions of the greatest expounders of the civil and

Roman law, and even of the greatest that the age could boast of—the most eminent Savigny; and finally settling down to hard and systematic study in Edinburgh, devoting himself to philosophy and civil law, he built grandly upon the foundation so well laid.

Returning to Charleston, he was admitted to the bar at the age of twenty-six. The delight of society, he was taken by the hand by all the better class of the profession, especially by Petigru. He had to contend, however, with some prejudice against "over education" and "too much learning," not always generously hinted at by his younger antagonists. But he had no sooner met the giants of the bar in open court, than all that "over education" and "too much learning" began to tell with magic power, so that in six years after his admission to the bar, he succeeded Petigru as Attorney General of the state. This opened to him every avenue of the profession, and he knew how to tread them all with grandeur and success.

Before this elevation to office he had been persuaded to take the immediate charge of the *Southern Review*, established as an exponent of Southern scholarship. Assisted by Dr. Cooper, Elliot, Hayne, Harper, and others, its pages could challenge comparison with any similar magazine in the country; but it was vitalized and made a living representative of the most advanced culture of the age by the genius, learning, and industry of Legaré. In that *Review*, and afterwards in the *New York Review*, he published a series of articles which, for scholarship and elaborateness of investigation, will compare favorably with the very best that have appeared in English or American periodicals. A few of them I name: "Cicero de Republica,"—"Roman Literature,"—"Classical Learning,"—"Memoirs of D'Aguesseau,"—"Jeremy Bentham,"—"Demosthenes—the Man, the Statesman, and the Orator,"—"Origin and Influence of Roman Legislation," etc.

Passing over the various and distinguished services he rendered within his state as Attorney General, he had occasion to visit Washington to argue an important case in the Supreme Court of the United States. His power, learning, and success were so marked on that occasion as to procure for him the special notice of Mr. Livingston, then Secretary of State. Legaré's great admiration for the civil law had been augmented by each successive advance of knowledge, and was now greatly stimulated by the exhortations of Mr. Livingston that he should pursue the study of it for great national purposes. Mr. Livingston thought, and subsequent reflection and study brought Mr. Legaré to the same conclusion, that it was practicable and desirable to infuse a large portion of the spirit and philosophy of the civil law, and even of its forms and process, into our system of jurisprudence.

The peculiar condition of our country, in which so much is new, and such essential modifications of pre-existing systems necessary, seemed to be adapted to the introduction of an eclectic system. Our political institutions and our republican habits, and even our physical condition, had forced upon us great changes in the system of common law, and seemed to open the way for further alterations with less of difficulty and danger than would attend such an attempt in England. And, indeed, when we consider "the common law in its minute adjustments and comprehensive outlines, how scrupulous of right and how instinct with liberty, how elastic and capacious to expand itself over the complicated transactions of the highest civilization, yet strong and rigid to bend down within its orbit the most audacious power; when we consider all the miracles that have been wrought by its spirit from Alfred to Victoria, we cannot but regard it with love and veneration." And yet it is true also of the civil law that it is a stupendous embodiment of the wisdom

of ages, arranged in an admirable method, and pervaded throughout by a philosophical spirit which combines all its parts and harmonizes all its dependencies into a beautiful identity.

Whatever advantages our system might be supposed to possess in the aggregate, Mr. Legaré determined upon a diligent and extended prosecution of the study of the civil law, that he might distinctly understand what, if any, portion could be advantageously adopted; and he came to the conclusion, after years of severe application, that much might be effected. He was offered the position of *chargé d'affaires* at the court of Brussels, to afford him an opportunity to reach all the appliances of legal science. This move not only furnished him with the opportunity, which he used to the greatest advantage, but it enlarged his knowledge of men and affairs, and gave him a social reputation with the best society in Europe. But the primary and controlling object was the perfection of his knowledge of the civil law. His acquirements in that direction served him in the argument of many a great cause; and in the large practice which flowed in upon his return home, his power and influence as a lawyer was immensely increased by this valuable knowledge.

LEGARÉ—THE LAWYER.

On his return to Charleston he was elected a member of Congress, but served only for a single term. For the rest of his life he determined to be, and was, a *lawyer*—an active and successful lawyer. He was engaged with or opposed to Petigru in nearly every great case in his own state, and measured his strength with the strongest at the bar of the Supreme Court of the United States.

Among the cases of great interest and importance in which he was engaged in South Carolina was that of *Pell*

and Wife vs. Executors of Ball. A Miss Channing, of Boston, had married a Mr. Ball, of South Carolina, and brought him a large fortune without any settlement. By his will Mr. Ball left all his fortune to his wife. Embarking at Charleston for a visit to the North on board the ill-fated steamer Pulaski, which blew up at sea, they both perished. The question was, Which survived the other? If Mrs. Ball, then the legacy vested in her and would go to her sisters; if her husband survived her, then the legacy had lapsed, and fell into the residue of his estate, and went to *his* family. Legaré represented the interests of Mrs. Ball's sisters. His opponents took it for granted by every law of probability that the husband, as the stronger of the two, was the survivor. The argument with which Legaré combatted this view was grand in the extreme. He claimed that positive testimony must always override presumptions. Mrs. Ball had been remarked flying about the boat, her voice distinctly heard above the tempest, calling on her husband. Here was a single striking dramatic effect, and Legaré, seizing upon it, conjured up the whole awful scene with a force and vividness which thrilled the court and audience. "Upon a narrow part," said the speaker, "of that shattered deck was enacted a scene to paint which all that imagination or oratory could invent of the most pathetic must fail. She called upon her husband, upon whom she had never before called in vain, upon whose arm she had ever leaned in danger—her stay, her refuge. She called, but he never answered. He was dead! dead! dead!" These three last words are said to have been uttered in tones so deep, so mournful, so solemn, so assured of the truth they uttered, that conviction was carried instantaneously to the minds of the hearers, and Legaré gained his suit. A bystander, no mean judge of the highest order of eloquence, remarked, "His eloquence ceased to be touching, only to become sublime."

There was no extent to which Legaré's industry and learning did not carry him when the necessities of his case seemed to require it. In the famous case of *Jewell vs. Jewell*, the great question was, What was the law of marriage in the United States? He took the trouble to send all the way to Vienna for Eichhorn's *Kirchenrecht*, of which he made great use in the argument, for Legaré was not only learned as a civilian, but a thorough German scholar. In profundity of legal research, in elevation of sentiment and social views, many familiar with his professional course consider this argument his *chef d'œuvre*.

President Tyler selected Mr. Legaré as his Attorney General. It was precisely the position for which he was best suited, and of which he was most ambitious. His success was perfect, in the estimation of both bench and bar. In the session of 1842, he not only argued three private causes of great moment, but no less than eight in behalf of the United States, nearly all of which he gained. The administration of Mr. Tyler seemed to injure the reputation of all connected with it. Legaré alone lost nothing, but gained immensely, by his position. The President, in the midst of his distracting cares, learned to rely upon him for counsel and assistance, within and without his office; and upon the withdrawal of Mr. Webster, the duties of Secretary of State, *ad interim*, were also imposed upon Legaré. He showed great skill in conducting, to a successful conclusion, the Ashburton Treaty, especially that portion relating to the vexed and dangerous question of the right to search. But the labors of those two departments imposed upon him the toils of Hercules.

While staggering under this load of work, he lost, in quick succession, his sister and his mother. His heart was broken. But he plunged with threefold assiduity into public business. The end was near; there seemed to be lying *perdu*

the seeds of organic weakness or disease, in the midst of iron nerves and a vigorous physique. His powers of endurance could not resist, and he must soon surrender.

LEGARÉ'S DEATH.

With the President he visited the Bunker Hill celebration at Boston, in June, 1843, and was there prostrated by a terrible attack; rapidly grew worse: was taken by his friend, Prof. Ticknor, to his house, and there died in the arms of his admiring host.

Mr. Legaré had been just twenty years at the bar, and four years of that time absent on a foreign mission. In sixteen years of practice he had exhibited powers and accomplished results never before equalled in this country. In his exhaustive preparation, both in literature and in law, in the breadth of his views and highly cultivated taste, no less than in his great intellect, lay the secret of his amazing success.

Mr. Legaré never married, but he delighted in the society of women of refinement and acquirements. In conversation he was brilliant, holding his own with the brightest of his day and generation. No intellectual entertainment was complete without him. One who often met him at the social board, has said: "However sumptuous the repast, when the viands were removed there was sure to be a feast far richer than the first. Our company often consisted of such men as Judge Huger, William Washington, Judge King, James R. Pringle, Col. Drayton, *always* Mr. Petigru. They were all excellent talkers, and in their sentiments of honor and manners of elegance, had succeeded the men of the Revolution. The best part of my own education was derived from these meetings, and from my midnight interviews with Petigru and Legaré. They had carried on *wholesale* operations in books and study; I always benefited by

the *retail* business which they occasionally dealt in. Legaré was not always cheerful, and was very sensitive about his personal appearance and want of stature. But no one could look at the beaming of his countenance without feeling the presence of intellect and power."

Of human gifts and human labors, the sentence is written: "The wind passeth over them, and they are gone, and the place thereof shall know them no more."

CONCLUSION.

Petigru and Legaré were the product and outgrowth of that peculiar phase of Southern civilization which has probably now disappeared forever. Was that civilization altogether vicious which produced such results? It was a modest civilization, which could not challenge admiration for its great cities or marvelous material growth; nor for its literary or scientific works of a permanent character. It was emphatically a social civilization, illustrated almost exclusively in the bearing and converse and virtues of living men. Its radiating centre was the home; its chief inspiration the social affections and kindly emotions. Hospitality was as boundless and as natural as the air we breathe.

I address myself to the most conservative and most fraternal of all professions, and do not fear that I shall be misunderstood. That people, in the phrase of the day, "accept the situation," and humbly bow to the decrees of Providence, but modestly, yet firmly, protest against the implication that whatever has been destroyed was necessarily wrong—that success is the sole test of merit.

If we admit this, we cast from us all that we derive from those more ancient forms of civilization, which have existed each in their turn, and then passed away, to leave us legacies of imperishable value. Are we any the less debtor to the glorious civilization of Greece for the philosophy of Plato,

the immortal verse of Homer, the matchless eloquence of Demosthenes—for the forms of ideal beauty which sprung into existence from the pencil of Apelles, and the chisel of Praxiteles—because that civilization has forever passed away, and there “is living Greece no more”?

No; we must not attempt to fathom the inscrutable ways of Providence, nor to set ourselves up as judges of the motives and intentions of Deity. This thought is beautifully illustrated in a recently published little poem of the great American sculptor, scholar, poet, whose reputation has even added lustre to the great name of Story:

“ I sing the hymn of the conquered,
 Who fell in the battle of life—
 The hymn of the wounded, the beaten,
 Who died overwhelmed in the strife;
 The hymn of the low and the humble,
 The weary and broken in heart,
 Who strove and who failed, acting bravely
 A silent and desperate part.

* * * * *

“ I stand on the field of defeat,
 In the shadow midst those who have fallen,
 Who have held to their faith unseduced
 By the prize that the world holds so high;
 Who have dared for a great cause to suffer,
 Resist, fight—if need be, to die.

“ Speak, History! Who are life’s victors?
 Unroll thy long annals and say,
 Are they those whom the world called victors,
 Who won the success of a day?—
 The Martyrs, or Nero? the Spartans who fell
 At Thermopylæ’s tryst?
 Or the Persians and Xerxes? his judges,
 Or Socrates? Pilate or Christ?”

My task is done. If this humble tribute to the virtues, attainments, services, of Petigru and Legaré has satisfied

you that this Association should "cherish their names and keep their memories green," I am more than content. And I trust that these sketches of those who have gone before us will give us a more decided interest in the *personelle* of our profession, and that we will feel more pride and satisfaction in contemplating its history and its traditions,

"If we but remember, only
Such as these have lived and died."

PAPER

READ BY

GUSTAVE KOERNER.

The Doctrine of Punitive Damages, and its Effect on the Ethics of the Profession.

If any of our state legislatures were to pass a law enacting that a plaintiff in any action for an injury inflicted on his person or property by the defendant, either from willfulness or culpable negligence, should not only recover full compensation for the injury suffered, but that the defendant should be fined in addition in any sum fixed by the discretion of the jury, not exceeding the damages claimed, said fine to be paid to the plaintiff, I am inclined to believe that intelligent persons outside of the legal profession—perhaps even some inside of it—would be somewhat startled. And yet such a law would be only a statutory enactment of the law as laid down by the courts of Great Britain and the United States for ages past. It is true that when declared from the bench it is not often presented in its nakedness, but is more or less enwrapped in circumlocution; nevertheless there is no distinction whatever, in principle, between the court law and the law as expressed in the statute we have imagined to have been passed.

One of the most able and luminous of our legal writers has undertaken to show that the decisions of the courts regarding this principle have been really misunderstood. He has traced the judicial sayings back to more than a

hundred years ago, and has endeavored to show that when the language of the judges is stripped of their mere *obiter dicta*, there remains no more than the recognition of the perfectly just principle that a plaintiff is entitled to no more than a satisfaction or compensation from the defendant, commensurate with the injury received.

With all due deference to Professor Greenleaf, I have no hesitation in saying that upon authority he is wrong, however right he may be (and I think is) on principle. To a reflecting mind the doctrine of allowing more than a compensation for the injury suffered, in any case, seems to be unjust and illogical.

The word "damage" is derived from *damnatio*, which the Pandects tell us is derived from *deminutio*. This *deminutio* is to be made good by the interposition of the law.

Some very able judges, while upholding the doctrine of punitive, vindictive, or exemplary damages as being sanctioned by authority, have done so very reluctantly. So Judge Ryan, of the Michigan Supreme Court, remarked, in the case of *Bass vs. Chicago & N. W. R. R. Co.*: "I always regretted that this court adopted the rule of punitive damages. It is difficult in principle to understand why, when a sufferer by a tort has been fully compensated, he should ever have anything more. And it is equally as difficult to understand why, if the tortfeasor is to be punished by exemplary damages, they should go to the compensated sufferer, and not to the public, in whose behalf he is punished."

Such sayings of eminent judges might be multiplied. But thus far this court-made law has not been changed.

One of the greatest objections, however, to the doctrine of punitive damages, in my opinion, consists in this: When a man is fined for the commission of an offense, at least where the fine is a heavy one, the accusation against him is, as a

general rule in the United States, first submitted to a grand jury, which is supposed to carefully examine the evidence against him before they find an indictment. Upon indictment found, his case is submitted to another jury.

In the trial—before which he enjoys, as a rule, a large privilege of peremptory challenge, and is surrounded by a great many safeguards denied to him in a civil action—a mere preponderance of testimony does not convict. His guilt must be proved beyond a reasonable doubt. It cannot be objected that in civil cases for damages that part which is intended as a punishment is never very large. An examination of the reports, both in England and in our country, shows that in a great number of cases that part has amounted to many thousands of dollars, sufficient in many cases, if given against an individual, to ruin him and his family forever. Corporations, however (always supposed to be very rich), have been the greatest sufferers. How often have judgments of ten thousand and more dollars been given against railroads for some rude or tortious conduct of some subordinate who had acted, while in the line of his employment, willfully, but without their consent or sanction, and often against their direct instructions? As a general thing, the sympathies of juries know of no bounds, when a tort has been committed by a corporation against an individual; while they are rather indulgent when the tortfeasor—particularly when made responsible for an act of his employé—happens to be one of their own class, and when their sympathies can be gratified at the expense of somebody else. But heavy damages have not been found against corporations only, but against individuals also. The formerly very common *crim. con.* cases in England resulted in verdicts amounting in some cases to twenty thousand pounds and more, and heavy damages have been assessed in our country. Only a few months ago a lady recovered in one of the Western states a

verdict of fifty thousand dollars against a physician accused of having violated her while under the influence of anæsthetics. Of course the crime committed was an enormous one, but he is liable to be punished by imprisonment for life for the same offense, and will be so punished if proved to be guilty. The plaintiff's injury in such a case cannot be estimated in damages. The fifty thousand dollars will not restore her. Her character would have been as well re-established by the criminal conviction of the vile offender.

It is but recently that the country has been startled by the verdict in the case of *Kilbourn vs. Thompson*, the sergeant-at-arms of the House of Representatives, where the plaintiff obtained from the jury \$100,000 for having been confined by him for some weeks in a most comfortable prison, on the order of a committee. To be sure they supposed that the government would pay the judgment, but this made no difference as far as the principle is concerned.

If it be urged in favor of punitive damages that there is a class of offenses which are not liable to be punished criminally, and where mere compensation would not be enough, the answer is that, at the present time, such cases are very few. In fact, there seems to be but one which is not generally considered as an offense against the peace of society in this country, namely, slander. But even that may be made finable, the same as libel, and it is made a public offense in all countries where the common law of England does not prevail.

It may be argued—and there is some apparent force in the argument—that a principle such as that of allowing punitive damages in addition to full compensation, sanctioned by so many able courts (and which perhaps may have, in some few cases, found a resting-place even in some of our statutes), and which has been administered almost daily before the eyes of an intelligent people, cannot be unjust and illogical.

The answer is, there was a time when its application was not illogical; when it was not unjust. No truer remark was ever made than that by Mr. Palgrave, in his *Rise and Progress of the English Commonwealth*, vol. i., p. 229: "Man," he says, "never begins by introducing any law which is entirely unreasonable, but he very frequently allows a law to degenerate into folly, by obstinately retaining it after it has outlived its use and application."

Goethe, in his *Faust*, expressed this idea poetically:

"Laws, like inherited disease, descend;
They slyly wind their way from age to age,
And glide almost unseen from place to place.
Reason to nonsense grows, a benefit to plague.
Woe unto thee, that thou a grandson art,
Of inborn law to which each man has right!
Of that, unfortunately, there is no question."

The fact is, this principle of punitive or vindictive damages is, if it would be too much to say, a relic of barbarism, yet a relic of very primitive times.

Let its origin be briefly traced. It took thousands of years before what we now call a state developed itself. It grew from the family into the *stirpes*; from those into tribes; from the tribes into peoples. The chief of the family was the giver of the law and its sole administrator. This absolute power has survived in the Roman *patria potestas*, which, until a rather late period of Roman history, remained without state control, and extended to power over life and death. The family included slaves. This power also involved the responsibility of the head of the family for all the injuries to other persons committed by its members. This followed quite logically from his unlimited control over his family, and this responsibility lies at the bottom of our doctrine of *respondent superior*, which the Romans, however, never extended to all other employés as we have done, from what is

believed to be dire necessity, but which extension is not based on strict reason. Offenses committed by members of one family against those of another were, if not voluntarily compensated, retaliated by members of the offended family, according to certain well recognized rates as to nearness of relationship, and so forth. Vengeance was the object. This mode of redress is still to be found amongst certain people living in isolated countries, and not yet brought within the pale of civilization. It is the "vendetta" from which our vindictive damages derive their name. When families expanded into *stirpes* and tribes, the redress of serious offenses was taken up by these latter. Civilization has finally succeeded in superseding private revenge and private war, leaving at last to nations only an appeal to arms, as the last arbitrament, for no other reason evidently than that it has thus far been found impossible to agree upon an international tribunal, whose judgment would find universal recognition.

It took centuries—even where a people had succeeded in forming something like a state, amounting to our present conception of a state, and in establishing judges and courts to settle controversies—before a clear line was established between private and public wrongs. Even the much vaunted Roman law was confessedly very incomplete and confused in that part of the law which we now designate as the criminal law.

By the laws of the Twelve Tables (303-304, *ab urbe condita*), one could kill a thief taken *in flagrante* in the night time; but if it were in day time, this could only be done when the thief resisted with arms. The same law, however, allowed a private settlement; and if that failed, the thief, when taken *in flagrante*, had to pay fourfold the value of the stolen property, otherwise only twofold. On failure he became, at least for a time, the slave of the injured person. The same laws provided for mayhem and wounding. Fines were paid

to the injured which were higher when the offense was committed against a freeman than when against a slave; but even in those cases private settlements were allowed.

For high crimes against the state, such as *perduellio*, and also for murder, there was a strictly criminal proceeding. In the course of time very many laws were passed, generally as the occasion seemed to call for them, against offenses which before were not so considered, until finally, and after the fall of the Republic to the time of Justinian, we find laws against most of the transgressions which we now consider as criminal. As a general rule, however, very many offenses could be compromised, or were punished by fines which went to the injured party; yet there was always a limit fixed by the edicts, which could never be surpassed, the essential equity pervading the Roman law not allowing arbitrary discretion even in the most flagrant cases. It is not surprising, therefore, when even such a highly refined people, as the Romans were in the last days of the Republic and under its emperors, had not reached a clear idea of the difference between public and private wrongs, that the Germanic and Celtic tribes, which from Asia colonized Northern Europe, and finally invaded and upset the grand Roman Empire, clung for ages to their primitive customs springing out of their family and tribal condition, and that the punishment of the crimes and offenses was left principally to the injured person or the family and tribe. In times of peace, the executive power of their chiefs and kings was very much limited, and it was a great progress when, at a later period, private retaliation and private war were superseded by legal composition. The different degrees of homicide had their regular prices with our Teutonic ancestors, and every wound its market value, adopting herein tariffs similar to those we find in the laws of the Twelve Tables.

The state was weak, and the mode of trying crimes exceedingly unsatisfactory. Hence the law compelled injured parties to settle the matter privately between themselves, fixing, however, a standard, thereby preventing arbitrary and extravagant estimates of injuries, such as we have so often to complain of. In the codes and laws of modern Europe, as a general rule, damages are allowed in civil cases beyond the actual injury; but the principles of the civil law have been adopted, in not allowing more than double or treble the amount of the tangible damages actually proved. In some states the courts (generally consisting of several judges) fix the proper limits, and in some others, damages for wounded feelings and the like are entirely excluded. By the law of France, in any criminal proceeding, the party injured may intervene and claim damages (*damages intérêts*), and the same court passes on both cases. But the criminal conviction must precede the allowance of damages, which is a considerable safeguard. The ascertainment of damages is never left to a jury. The judges may, if they think proper, hear additional testimony from either side to that given in the criminal proceedings respecting the damages.

If it is objected that there are some cases where the injury to persons or property is very slight, or in the first case not physical at all, and yet of a nature to produce great anguish of mind or disgrace in the eye of the public, and that therefore compensation could only be very slight or nominal, the answer is that, in such cases as libel, slander, or assault, the offender may be criminally punished, and the severity of the fine will be ample satisfaction to the injured person. The Roman law punished, from the earliest times of which we have any record, libel and slander with severe penalties; and for slanderous words publicly sung in the streets, according to a law of the Twelve Tables, banishment and even sentence of death could be pronounced. Besides, there is no insuperable

objection to allowing in such cases some compensation for the indignity suffered, or the shock to the feeling, looking upon such mental suffering as being the immediate and necessary consequence of the actual physical injury, limiting, however, such damages to a certain amount in proportion to the actual damage.

As the doctrine of punitive or vindictive damages has sprung from judge-made law, it is not perceived why the judges cannot unmake it. There is nothing to prevent the doing away with it by statutes, providing that in no case punitive damages should be allowed, but that the plaintiff should only recover just compensation for the injury he has received, including such damages as may immediately and directly flow from the infliction of the injury. The principle for which I contend is briefly this: That damages should be a recompense to the sufferer, and not a punishment of the offender; that the interest of the aggrieved should not be blended with the interests of society.

That the doctrine of punitive damages, coupled with that of *respondeat superior*—the latter carried, as it is both in England and this country, to such an extent that the employer is liable for the wrongful acts of his employés, although he may have selected them with the greatest care, and may have given them the most proper and minute instructions in regard to their duties—has had a most injurious effect upon our profession. I do not hesitate to positively affirm that fifty years ago a certain class of practitioners had to live almost exclusively on actions of libel, slander, assault and battery, and the few cases of stage and other accidents. But now, when the locomotive thunders day and night over a hundred thousand miles of track; when our cities, both large and small, teem with all sorts of machinery; when steamboats constantly plough our rivers and lakes, the chapter of accidents is unfortunately endless. Corporations

or wealthy private persons being usually held responsible for all these accidents, there is a rich harvest offered to a certain class of the legal fraternity.

There is no need of multiplying words. Actions sounding in damages, where large verdicts are the price to be obtained, almost with proof, by a stereotyped speech fluently delivered, have always had a tendency to lower the profession, and at the present time, owing to the large crop of such suits, have demoralized it to a very great extent. Punish criminal negligence and willful tortious conduct by fines and imprisonment, and abolish punitive damages in civil suits, and a very large and daily increasing class of lawyers, who disgrace our noble calling, will find their occupation gone, to the great benefit of the profession and the community at large. Such suits, from their very nature, produce those gambling contracts, where the compensation depends entirely and exclusively upon success—a species of stipulations, denounced at all times, either by the law or by honorable custom, and holding out great temptations to weak members of the profession, inducing them to resort to all sorts of means to obtain a verdict.

In Great Britain, and even in our federal courts, the danger of unrighteous verdicts is not so great, because there the judges, by their instructions on the whole case, exercise a most wholesome influence over juries, and do not shrink from setting aside unjust verdicts. But it is quite different in many states, where, from the fact of the judiciary being elective, too many judges have an eye on the popular vote, and are in most states not permitted to instruct at large. But the doctrine which has been briefly discussed is, as I stated before, wrong in principle, and the time will surely come when it will be reconsidered and abolished, or at least greatly modified.

PAPER

READ BY

U. M. ROSE.

Titles of Statutes.

In selecting as the subject of this paper that of the Titles of Statutes, I have been mainly influenced by two considerations: 1. The subject seems to have received but little attention, being usually dismissed by our text writers with a dubious and slighting paragraph or two. 2. The topic is extremely well defined, and may therefore, as I take it, be not improperly chosen as an example of that natural process by which legal principles have their birth, and gradually ripen into rules of practical utility, nowise foreseen in their earlier stages. In very many cases a large part of this process is lost, like the geological formations, in the night of time; and in such cases we can only judge of the remote part by what has occurred within the historic period. But in the case of the subject that I have chosen, the entire transformation or evolution lies within the limits of modern research singularly free from complication with any neighboring matter.

To the uninitiated, every science must largely appear as a collection of arbitrary rules. Such is especially the popular conception of the law; but those who carefully trace its history and gradual development attain to the important fact that law, in its highest sense, like all other sciences, is

not made by man, but is only discovered by him, having its origin and growth in necessities and aspirations, inherent in his surroundings and in himself, and over which he has only a very partial control. It is this fact that lends to the law in the eyes of its devotee its paramount interest. He perceives in it a fabric elaborated from all the materials of human knowledge and research, building the most remote ages in one, so enriched with the experience of all time, so intimately connected with all of the enjoyments, events, and duties of life as to enable him to realize the fine conception of antiquity, that there is nothing which relates to humanity that concerns him not.

But it is not my intention to dwell at this time on the advantages to be derived from the study of the law in its historical aspects, but rather to seek to apply that method, as consistently as may be, to one of the simplest of legal topics.

It is of course well known to you all that, until within a comparatively recent period, the title of a statute was only a name, having no further significance than a mark of identification, and that at present such titles have acquired a fixed place in the constitutional law of a large majority of the American states.

To a casual observer, nothing might seem more arbitrary, or even capricious, than such a result; but a very brief review will serve to show that it is the orderly outgrowth of natural causes of the most lasting character, and wholly inseparable from the conditions in which they take their rise.

Lord Coke commends certain statutes for being shortly penned; and says that "it was the wisdom of ancient parliaments to comprehend much matter in few words."*

Another characteristic might be referred to as serving to distinguish the old statutes mentioned. They had no titles; for it

* 2 *Inst.* 306, 401.

is said that the title of an act is but a new usage, dating from about the 11th Henry VII.* At first the title was usually framed by the clerk of that house in which the bill first passed, and it was seldom read more than once. Being commonly written in red ink, these titles were for a time called *rubrics*.†

Evidence might be adduced to show either that the clerks were somewhat careless in the discharge of this duty, or that they did not conceive any necessary connection as existing between the contents of a statute and the title or name by which it was to be called.

At any rate, it is clear that the courts could not rely upon a title thus affixed by a mere ministerial officer as affording any evidence of what the legislature meant. For the purposes of interpretation, the clerk had no special advantages over those possessed by the courts; he was also without judicial training, and without the salutary influence derived from the responsibility attached to the judicial office.

After the practice had changed, and when titles had come to be affixed to bills in the way that is customary at the present time, the courts continued to disregard them as means of interpretation. Chief Justice Holt said :

“It is true that the title of an act of Parliament is no part of the law or enacting part, no more than the title of a book is part of the book ; for the title is not the law, but the name or description given to it by the makers.”‡

This comparison of the title of an act with the name of a book was perhaps more forcible at the time it was made than it would be now ; for in the time of Lord Holt the fashion of giving conceited and far-fetched titles to books

* 1 W. Blackst. 95.

† Poulter's Case, 11 Rep. 29.

‡ Mills vs. Wilkins, 6 Mod. 62.

was extremely prevalent. At any rate, the title was regarded as affording "no legislative import."*

Gradually, however, in the development of the law, titles of statutes have come to be considered as aids to interpretation, at least in cases of great doubt. But their position as such is quite subordinate, and is not very well defined.

Mr. Dwarris admits that the title is a part of a statute in a popular sense, but will not consent that it shall be so considered in a legal sense. The distinction is not important: the only practical question being as to what weight, if any, shall be given to the title in the process of construction. But here, as in many other things, it would seem that there is a fair prospect that popular views will ultimately prevail.

That the title of a statute may be referred to in order to ascertain the intent of the legislature, in case of serious doubt, is now well settled, both in England and in this country.†

The object of the legislature is very often avowed in the title, as well as in the preamble; and when the mind labors to discover the design of the legislature, it seizes upon everything from which it may be derived. In such case the title claims a degree of notice, and will have its due share of consideration.‡

It follows from what has been said, that no such reference can be made unless in cases of doubt.§

* Attorney General *ex. Weymouth*, Ambler, 22.

† *Stradling ex. Morgan*, Plow. 203; *King ex. Cartwright*, *King ex. Marks*, 3 East, 160; *Cohen ex. Barrett*, 5 Cal. 195; *Flynn ex. Abbott*, 16 *id.* 358; *Harris ex. San Francisco*, 52 *id.* 553.

‡ *Perry County ex. Jefferson County*, 94 Ill. 214; *People ex. Hoffman*, 97 *id.* 234; *Wilber ex. Paine*, 1 Ohio, 251; *Cumines ex. Supervisors*, 63 Barb. 287; *Pumpelly ex. Owego*, 45 How. Pr. 219; *Flynn ex. Abbott*, 16 Cal. 358; *United States ex. Fisher*, 2 Cranch, 358.

§ *In re Boston Co.*, 51 Cal. 624; *Davidson ex. Clayland*, 1 H. & J. 546; *Comm. ex. Slifer*, 53 Penn. St. 71; *Mutual Ins. Co. ex. Stokes*, 9 Phila. 80; *Hadden ex. Collector*, 5 Wall. 110.

In Massachusetts it is held that the title is no part of the act: * while the United States courts hold that it is a part, but only a formal part.†

In Ohio it is said that the title, being framed in the same manner as the bill, and sanctioned by both houses of the legislature, may be considered explanatory of its object.‡

In Massachusetts it is said that where the enacting part of a statute is doubtful, or too general, the title may be referred to for explanation or in restraint of its generality.§

In Wisconsin it is held that the title of a private act must be presumed to express the subject thereof correctly, and that therefore it is an important source of information in case of ambiguity.|| But as the title is seldom the subject of special consideration by the legislature, it cannot be used to extend or restrain any positive provision contained in the body of the act.¶ The evidence afforded by the title is but slight, ** and the title can never be used to change the enacting part, but, subject to the qualification that it is an unsafe and unsatisfactory guide, it may be referred to in cases of doubt, as furnishing some aid in showing what was in the legislative mind;†† and then the title is no further to be relied upon than it serves, when taken into consideration with the enacting part, to complete the chain by which the

* 7 Pick. 455; 8 Metc. 429; 4 Allen, 13; 106 Mass. 313.

† Hadden *vs.* Collector, 5 Wall. 110; Ogden *vs.* Strong, 2 Paine, 584.

‡ Burgett *vs.* Burgett, 1 Ohio St. 469.

§ Field *vs.* Gooding, 106 Mass. 310.

|| Nazro *vs.* Ins. Co., 14 Wis. 295.

¶ Hadden *vs.* Collector, 5 Wall. 110; Comm. *vs.* Cain, 14 Bush, 525.

** Williams *vs.* Williams, 4 Seld. 535.

†† United States *vs.* Palmer, 3 Wheat. 610; Baring *vs.* Erdman, 14 Haz., Penn. Reg. 129; Pulis *vs.* Dearing, 7 Wis. 221; Flynn *vs.* Abbott, 16 Cal. 358; Barnes *vs.* Jones, 51 *id.* 303; Bentley *vs.* Rotherham, 46 L. J., Ch. 284.

mind may be drawn to a conclusion on the great question of the real intent and design of the act.*

But legislative enactments are not to be defeated on account of mistakes, errors, or omission any more than other writings, provided the intention can be gathered from the whole statute. If a mistake renders the intention doubtful, the courts will look at the title and preamble, as well as the body of the act; and not until all these fail, will the act be held inoperative.†

Probably less effect is given to the titles of acts of Congress than to the acts of other legislative bodies, growing out of the custom of Congress to insert in the same statute the most incongruous provisions, having no reference to the matter specified in the title. In *Hadden vs. Collector*,‡ the court cites a number of acts of Congress of that kind. In the case of appropriation bills, it is common in Congress to insert a variety of the most dissimilar matters in one bill. In respect of these the title must be disregarded wholly, each clause requiring a separate scrutiny, and a construction according to its own separate merits.§

The precise influence of constitutional provisions, such as will hereafter be referred to, in effect that no law shall embrace more than one subject, which shall be expressed in its title, should have on the title as evidence of the legislative intent, is not well settled. In Kentucky it is held that it has none; but in Pennsylvania it is held that this constitutional requirement lends additional significance to the title as an instrument of interpretation.||

* *United States vs. Fisher*, 2 Cranch, 386; 1 Kent Comm. 464; Smith, Stat. and Const. Law, secs. 556, 557; 3 East, 165.

† *Nazro vs. Ins. Co.*, 14 Wis. 295.

‡ 5 Wall. 110.

§ 7 Opinions Attorneys General.

|| *Comm. vs. Cain*, 14 Bush, 535; *Penn. R. R. Co. vs. Riblet*, 66 Penn. St. 164; *Eby's Appeal*, 70 *id.* 311; *Cochran vs. Library Co.*, 6 Phila. 492.

In England the marginal notes of an act of Parliament may be referred to as showing its meaning,* as well as the headings and divisions of different portions of a statute.†

In New York it is held that the head-notes of subdivisions of a statute are entitled to more weight than its title.‡

Mr. Sedgwick, after mentioning the gradual change in the law in respect of the influence of titles on interpretation, says :

“It seems to me on the whole, however, that the original rule is the true one. The title is rarely a matter of legislative debate or scrutiny; and though it may, and doubtless does, give a general idea of the purpose of the act, still it is precisely in cases of nicety and doubt that it cannot with safety be relied upon.”§

The suggestion is certainly an acute one, as it may well be inferred that the same carelessness or want of skill in the use of language which would serve to render the enacting part of a statute ambiguous, would also pervade the title, which is usually the work of the same author. Yet as the works of men are commonly by no means of uniform quality, cases may well arise of doubtful enactments annexed to titles of extreme clearness. The spirit of modern jurisprudence tends to discountenance general and sweeping rules for discarding testimony which may result at times in willful blindness. With the many admonitions contained in the books, something may be trusted to the sagacity and prudence of the judge, as various cases may arise. It might be thought that, as titles have such a precarious and unimportant place in construction, the difference between the rule

* *Venour vs. Sellon*, 2 Ch. D. 522.

† *Directors vs. Brand*, L. R. 4, H. L. 171.

‡ *People vs. Molineux*, 53 Barb. 15; S. C. 40, N. Y. 113; see also *Barnes vs. Jones*, 51 Cal. 306.

§ Sedgw., Stat. and Const. Law, 51.

that excluded them and that which admits them is but slight; but in many cases it must be immense, for in all matters of interpretation in which great doubt exists, it is, after all, the very dust of the balance that is decisive.

One serious difficulty in giving much weight to titles is to be found in the fact that many of the titles of acts are designed to conceal rather than to explain their contents; devised with a view to obtain the support of careless or confiding legislators, who may be induced to vote for a bill simply because its title recommends it as being promotive of a praiseworthy object. Statutes of this kind are very common—statutes of which it might be said, in the language of the Shakespearean drama, that their

* * * " titles
Hang loose about them, like a giant's robes
Upon a dwarfish thief."—*Macb.*, act v., sc. 2.

An instance of this kind may be found in a bill said to have been lately introduced in Congress, under the title of "A Bill for an Act to reduce Taxation." This title was sufficiently captivating, but on examination it was found that the bill, if enacted, would increase the rate of taxation on every article of taxation mentioned in it.

It is clear that if the courts could qualify laws procured in this fraudulent manner, by softening the rigor of the enacting part of the fine qualities of their titles, the real intent of the majority of the legislature voting for them might be reached in a roundabout way; but usually this could not be done without giving greater weight to the title than to the enacting part.

In twenty-five of the states of the Union an effort has been made to prevent this species of legislative fraud by constitutional provisions, to the effect that no law shall embrace more than one subject, which shall be expressed in its title. The language varies to some extent, but the sub-

stance of this clause in the Constitution referred to is apparently about the same. In two of the states it is limited to local and private acts.

Speaking of this constitutional requirement, Chief Justice Gardiner said :

“Now, it is notorious that the discrepancies between the headings and subjects of our laws were so frequent, that a constitutional provision was deemed necessary to guard against imposition upon a class of legislators whose knowledge of bills was supposed to be gathered principally from the titles.” *

As an example of an act “more spacious than its title,” Lord Coke refers to the Statute of Uses, which “extends to jointures and dowers of women.”

The prevalence of the evil is of a very old date. On this subject Mr. Sedgwick says :

“The evils which these constitutional provisions were intended to prevent are not of recent date. Mr. Barrington says (*Observations on Statutes*, 449): ‘It becomes, indeed, impossible, when statutes relate to matters of a very miscellaneous nature, that the title be co-extensive with the views of the legislature. It is therefore to be wished that such acts of Parliament were distinct laws, and not thrown together in that very strange confusion which hath now obtained the name of a Hodge Podge act.’” †

It will be observed, however, that the device thus complained of is an obvious one; and as human nature has undergone no radical change, at least during the period covered by profane history, we might reasonably expect to discover the same evil existing in other times and countries where written statutes were enacted by legislative assemblies. We accordingly find that what is called in England as a

* *Mayor vs. Colgate*, 2 Kern, 156; *People vs. Hills*, 35 N. Y. 449.

† Sedgw. on Stat. and Const. Law, 53.

Hodge Podge act, was equally well known in the days of the Roman Republic under the equivalent name of a *lex saturata*; that long before the foundations of the common law were laid, and as early as the ninety-eighth year before the beginning of the Christian era, an effort was made to apply a practical check to the evil as it existed at that day in Rome.

The following account of the matter is given by a standard historian of the Roman Republic:

"The administration of that year was distinguished by an act in which both consuls concurred, and which is, therefore, marked in the title with their joint names. The Roman people had frequently experienced the defect of their forms in their manner of enacting laws. Factionous tribunes had it in their power to carry motions by surprise, and to pass in the same law a variety of clauses; and by obliging the people to pass or reject the whole in one vote, frequently obtained, under the favor of some popular clauses, acts of a very dangerous tendency. To prevent this abuse, it was now enacted, upon the motions of the consuls Cæcilius and Didius, that every proposed law should be made public three market-days before it could receive the assent of the people, that all of its different clauses should be separately voted, and that it should be lawful for the people to pass or reject the whole or any part of it."* Such was the preventive then applied.

Whenever a law was voted in violation of these provisions, it was decreed by the Senate to be void. Thus we learn from the oration of Cicero, *pro domo sua*, that the laws of Donsus were annulled on that account.

Though we possess no detailed report of the effect of these limitations on legislative power, we have reason to suppose that they were highly beneficial, as we find that many years

* Ferguson, *Hist. Roman Republic*, book i., ch. 6.

afterwards, when the Republic was being wasted and ruined by the combined action of corruption and personal ambition, Cicero, in a letter to a friend, mentioned, among the more portentous evils that were beginning to prevail in the state, a neglect of the Cæcilian and Didian law.*

The author of the provision in the American constitutions designed to affect a like object and to produce a reformation in the titles of statutes, is said to have been General James Jackson, of Georgia, a man renowned in his day, both in war and in peace, but whose name is no longer known save to readers of history. This provision was suggested to him by a fraud that was perpetrated in 1795, by and upon the legislature of Georgia, by which a grant of land was procured to a few unprincipled persons, containing, to use the words of Jackson himself, "more square miles of unlocated territory than either of the German principalities, and of greater extent than some European kingdoms." Jackson, who was at that time a member of the United States Senate, and who was well acquainted with the theories of constitutional law then prevailing, wrote a series of letters in which he denounced this grant of land as being unconstitutional. Being afterwards Governor of Georgia, at the time the convention was held that formed the Constitution of 1798, it is said that it was upon his suggestion that the clause providing that no law should embrace more than one subject, which should be expressed in its title, was for the first time introduced into an American constitution.†

The act which gave rise to this measure was particularly obnoxious. It contained nothing to recommend it, and it incurred additional odium by the elaborate hypocrisy of its title, which was as follows :

"An act supplementary to an act for appropriating a part

* Ep. Ad. Att. ii. 9.

† *Mayor vs. State*, 4 Ga. 26 ; 6 Ga. 21.

of the unlocated territory of the state for the payment of the late state troops, and for other purposes therein mentioned, declaring the right to the unappropriated territory thereof, for the protection and support of the frontiers of this state, and for other purposes therein mentioned." It will be observed that there was nothing in the title of the act but indications of an eager regard for important public interests; and yet it contained nothing more than an unblushing scheme of public plunder.

The language used in the different state constitutions is not precisely alike, but the meaning serves to be about the same. In some of the later constitutions the word "object" has been inserted in place of "subject;" but the courts have not indicated any difference in the purposes had in view. In two of the states the provision is limited to private and local acts.

In Ohio it is held that the provision in question is directory merely, and that an act passed in violation of it is not void on that account.*

In California a like decision was made at an early day;† but some doubt has been thrown on this ruling by later decisions in the same State.‡

In all the other states it is held that the provision is mandatory, and that a failure to comply with it renders an act void.

It might seem to be quite impossible to decide what is "one subject," and to say where any one subject begins and ends, seeing that all the branches of human knowledge, and particularly all the branches of the law, run into each other by insensible gradations, and are connected by innumerable analogies; and since, on the other hand, any subject

* *Pim vs. Nicholson*, 6 Ohio St. 176. † *Washington vs. Page*, 4 Cal. 388

‡ *Pierpont vs. Crouch*, 10 Cal. 315; *Cohen vs. Barrett*, 5 *id.* 195; *Flynn vs. Abbott*, 16 *id.* 358; *Barnes vs. Jones*, 51 *id.* 303.

in the law may be analyzed and reduced to many separate and independent topics. The question of identity is one of the standing puzzles of metaphysics. But the law is eminently practical, possessing methods peculiarly its own, by reason of which it claims to rank as an independent science. Hence it is that very little difficulty has been experienced in the construction of this provision, though at times its application has given rise to doubt and dissent.

But in one case its object was apparently misconceived, and in such a way as apparently to impose on as accomplished a jurist as Theodore Sedgwick. The Supreme Court of Louisiana said:

“The title of an act often affords no clue to its contents. Important general principles were found placed in acts private or local in their operation. Provisions concerning matters of practice or judicial proceedings were sometimes included in the same statute with matters entirely foreign to them; the result of which was that on any important subject the statutes had become almost unintelligible, as they whose duty it had been to examine or act under them can well testify. To prevent any further accumulation to this chaotic mass was the object of the constitutional provision under consideration.*

Mr. Sedgwick refers to this passage with approval.†

But as reliance in searching for the contents of statutes is had upon indexes rather than upon their titles, it would appear that the inconvenience thus mentioned was a matter of minor consideration, hardly requiring of itself the interposition of a constitutional restriction.

All the other decisions concur in referring to more important objects to be attained. One of these was to prevent the uniting of various subjects, having no necessary or nat-

* Walker vs. Caldwell, 4 La. An. 298.

† Sedgw., Stat. and Const. Law, 519.

ural connection with each other, in one bill, for the purpose of combining various pecuniary interests in support of the whole, which could not be combined on any one by itself: * to prevent grafting upon subjects of great public benefit and importance, foreign and pecuniary matters for local or selfish purposes.†

The end thus sought to be suppressed is known among American politicians as "log-rolling"—a term said to have originated with the lumbermen of the state of Maine, who used to assist each other by turns in their labors.‡

But another and equally important object was to put an end to the practice of misleading legislators and the public by delusive and fallacious titles—a practice shown to be productive of incautious and fraudulent legislation.§

Considerable stress is laid on the importance that exists that the public shall be advised of what is going on in the legislature before final action.|| Under this provision, if a statute have no title, it is void. ¶ So if they embrace two or more subjects, whether they are expressed in the title or not. **

It is not a valid objection to a statute merely that some of the sections are civil and some are penal in their character; ††

* *Connor vs. Mayor*, 1 Selden, 285, 293.

† *Davis vs. State*, 7 Md. 151; *People vs. Mahaney*, 13 Mich. 494; *Devlin vs. Mayor*, 63 N. Y. 13; *Hingle vs. State*, 24 Ind. 28; *People vs. Briggs*, 50 N. Y. 558; *Smith vs. Comm.*, 8 Bush. 111; *Burroughs*, Pub. Sec. 421.

‡ *Bartlett's Diet. of Americanisms*.

§ *Sedgw. Stat. & Const. Law*, 52; *Boyd vs. Alabama*, 94 U.S. 649; *People vs. Briggs*, 50 N. Y. 558; *Davis vs. State*, 7 Md. 151; *Hingle vs. State*, 24 Ind. 28; *People vs. Mahaney*, 13 Mich. 494.

|| *New York Bridge, in re*, 72 N. Y. 533; *Devlin vs. Mayor*, 63 *id.* 13.

¶ *Binz vs. Weber*, 81 Ill. 288.

** *People vs. Denahy*, 20 Mich. 349; *Hind vs. Rice*, 10 Bush. 528; *Yeager vs. Weaver*, 64 Penn. St. 425; *Gaskin vs. Meek*, 42 N. Y. 186; *People vs. Supervisors*, 43 N. Y. 10; *Murray vs. New York*, 11 J. and Sp. 164; *Thomasson vs. State*, 15 Ind. 449; *Davis vs. State*, 7 Md. 151.

†† *Thomasson vs. State*, 15 Ind. 449.

but if the title relate only to a civil proceeding, a section relating to a criminal proceeding is void.*

An act having one main object in view, properly expressed in its title, may incidentally affect or promote others not therein expressed. It would be impossible so to legislate as to prevent this consequence.†

If the provisions of the act are of the same nature, and come legitimately under one general denomination, or have one general object, the act is not unconstitutional.‡

It is no objection that the title is needlessly particular in stating details by naming several things as embraced in the statute, if they are all related to each other; unnecessary words being surplusage, which will not vitiate.§ And it is no objection that a matter more logically belongs to a subject different from that which constitutes the main burden of the act, or that it might more properly constitute the subject of a separate act, if there is really a natural or logical connection between the title and the different parts of the act.|| But though the main object of an act be within the limits of this clause of the Constitution, yet it may sin against it by including a subject of the same character as that expressed in the title, but so much more general and sweeping as to be apt to mislead.¶

But the chief difficulty occurs upon the clause requiring the subject or object of the statute to be expressed in the title. On this point a good deal of latitude is allowed. Of

* *State vs. Wilson*, 7 Ind. 516.

† *Tadlock vs. Eccles*, 20 Texas, 792.

‡ *State vs. County Judge*, 2 Iowa, 284; *S. M. Ins. Co. vs. New York*, 5 Sandf. 10; *Austin vs. G. C. R. R. Co.*, 45 Texas, 267.

§ *Greaton vs. Griffin*, 4 Abb. Pr. N. S. 310; *Winona R. R. Co. vs. Waldron*, 11 Minn. 515; *Davis vs. Woolnough*, 9 Iowa, 104; *Gunter vs. Dale Co.*, 44 Ala. 639; *State vs. Bowers*, 14 Ind. 195; *Farley vs. Dowe*, 45 Ala. 324; *Bridgford vs. Hall*, 18 La. An. 211; *ex parte Upshaw*, 45 Ala. 234.

|| *Hingle vs. State*, 24 Ind. 28.

¶ *Smith vs. Mayor*, 7 Robt., N. Y. 190; *People vs. O'Brien*, 38 N. Y. 193.

course the statute is always upheld in all doubtful cases; every reasonable intendment being made in favor of the proceedings of the legislature, it not being presumed in any case that it has violated the Constitution.*

The constitutional requirement should receive a reasonable and not a technical construction,† and no unnecessary restriction should be placed on legislative action.‡

The courts cannot enlarge the scope of the title, but will construe liberally, so as to sustain all the provisions of the act not clearly beyond the purview of the title;§ and they will not adopt such a construction as will cripple legislation by prohibiting the insertion of matters not specifically expressed in the title, but which are necessary to the full accomplishment of the object so expressed.||

It is not necessary that the title of an act should be a complete index or synopsis of its contents;¶ it is only necessary that it fairly give notice, though in general terms, of the subject of the act, so as reasonably to lead to an inquiry into its body.**

Neither is it required that it should set forth the separate provisions, or the details by which its objects are to be accomplished.†† The particular manner in which the objects

* *State vs. Commissioners*, 26 Ind. 522; *Gillespie vs. State*, 9 *id.* 380; *Miller vs. State*, 3 Ohio St. 475; *People vs. Briggs*, 50 N. Y. 558; *Kerrigan vs. Force*, 82 *id.* 199; S. C. 68 *id.* 81; *Comines vs. Supervisors*, 63 Barb. 287; *Pumpelly vs. Owego*, 45 How. Pr. 219; *Middleton, ex parte*, 82 N. Y. 199.

† *Johnson vs. Higgins*, 3 Mete., Ky. 569.

‡ *Smith vs. Comm.* 8 Bush, 111.

§ *Howland Coal Co. vs. Brown*, 13 Bush, 684; *McNeill vs. Comm.* 12 *id.* 732; *Giddings vs. San Antonio*, 47 Texas, 548; *Robinson vs. State*, 15 *id.* 311.

|| *State vs. Stuart*, 14 Minn. 524; *Boyd vs. Alabama*, 94 U. S. 649.

¶ *Comm. vs. Green*, 58 Penn. St. 226; *Martin vs. Broach*, 6 Ga. 21.

** *Allegheny Home's Appeal*, 77 Penn. St. 77; *State Line R. R. Co.'s Appeal*, *id.* 429; *Mauch Chunk vs. McGee*, 33 Leg. Int. 272; *Johnson vs. People*, 83 Ill. 431.

†† *People vs. Lawrence*, 36 Barb. 177; S. C. 41 N. Y. 123; *People vs.*

of a statute are to be accomplished need not be, and, indeed, cannot be, expressed in the title.* If the title expresses a general purpose, all matters fairly and reasonably connected with its accomplishment are germane to the title, and need not be specifically expressed,† although not verbally indicated by the title.‡ The title need not be exact in all respects; nor anything more than a brief statement sufficient to indicate the nature of the act.§

The relationship between the different provisions of the statute and the title need not be direct;|| all that is required is that they shall not be foreign from the subject expressed in the title.¶

The constitutional clause in question does not assume to divide and classify the law under particular heads or subjects. That is a power left to the legislature, to be exercised according to its discretion. It only requires that the subject expressed shall be reasonably specific, or such as to indicate

Commissioners, 47 *id.* 501; Fourteenth Street, *in re*, 50 *id.* 363; Sharp *vs.* New York, 31 Barb. 572; Harris *vs.* New York, 59 N. Y. 599; Devlin *vs.* New York, 63 *id.* 8; People *vs.* Willsea, 60 *id.* 507; Kerrigan *vs.* Force, 68 *id.* 381; Hurlburt *vs.* Hanks, 67 *id.* 568; Gloversville *vs.* Howell, 70 *id.* 287; Parkinson *vs.* State, 14 Md. 184; San Antonio *vs.* Lane, 32 Texas, 405; Haggard *vs.* Hawkins, 14 Ind. 299; Brandon *vs.* State, 16 *id.* 197; *in re* Astor, 50 N. Y. 367; Sun Ins. Co. *vs.* Mayor, 8 N. Y. 252.

* Collins *vs.* Henderson, 11 Bush, 79; San Antonio *vs.* Mehaffy, 96 U. S. 315; San Antonio *vs.* Lane, 32 Texas, 405; Mayer *vs.* Cahalin, 5 Sawyer, 357.

† People *vs.* Briggs, 50 N. Y. 553; People *vs.* Commissioners, 53 Barb. 70; Wenzler *vs.* People, 58 N. Y. 516; People *vs.* Morgan, *id.* 679; People *vs.* Banks, 67 *id.* 568; *ex parte* New Bridge, 72 *id.* 527; Burke *vs.* Monroe Co., 77 Ill. 610; Giddings *vs.* San Antonio, 47 Texas, 548.

‡ Igoe *vs.* State, 14 Ind. 239; Grubbs *vs.* State, 24 *id.* 295.

§ Parkinson *vs.* State, 14 Md. 184.

|| Phillips *vs.* Covington Bridge Co., 2 Metc. Ky. 222.

¶ Howland Coal Works *vs.* Brown, 13 Bush, 681; Phillips *vs.* Bridge Co., 2 Metc., Ky. 222; Louisville Turnpike Co. *vs.* Ballard, *id.* 168; Chiles *vs.* Drake, *id.* 150; Johnson *vs.* Higgins, 3 *id.* 569; McReynolds *vs.* Smallhouse, 8 Bush, 447; Allen *vs.* Hall, 14 *id.* 86.

a particular branch of legislation or head, under which the provisions of the act may be reasonably looked for. The legislature is not subject to judicial control in respect of form or mode in which the subject of a law shall be expressed. If it is expressed, the courts are satisfied.*

The courts do not require great accuracy in describing the objects of the bill; although the words used may not be the most appropriate to describe them, yet if they can be brought within the title, and it is not misleading in its character, the act will hold good,† and the degree in which each provision relates to the subject expressed in the title is not material, if each legitimately tends to the accomplishment of the general purpose.‡

But the title must afford reasonable information of the subject of the act—the subject must be cognate with it§—and the connections between the different parts of the statute and the subject expressed in the title must be a real one, and not incidental merely.||

But as the question always is as to whether the title is of a kind to mislead a legislator or the public as to the nature and design of the statute, no precise rule can be laid down that will always determine what bills and titles come in conflict with each other; and much is left for the consideration of the court in each case as it may arise.¶

When a statute purports to amend several prior statutes,

* *Bright vs. McCullough*, 27 Ind. 223; *People vs. Banks*, 67 N. Y. 572; *Harrington vs. Wands*, 23 Mich. 389; *Tuttle vs. Strout*, 7 Minn. 468.

† *Comm. vs. Green*, 58 Penn. St. 226; *People vs. McCallum*, 1 Neb. 182; *Mayer, ex parte*, 50 N. Y. 507.

‡ *Ex parte Mayer*, 50 N. Y. 507; *People vs. Rochester*, *id.* 525; *People vs. Briggs*, *id.* 553; *ex parte Volkering*, 52 *id.* 650; *Sullivan vs. New York*, 53 *id.* 652; *ex parte Van Antwerp*, 56 *id.* 261.

§ *People vs. Institution*, 71 Ill. 229; *Schall vs. Norristown*, 6 Leg. Gaz. 157.

|| *O'Donohue vs. Aikin*, 2 Duval, 479.

¶ *Tift vs. Buffalo*, 82 N. Y. 211.

alterations of them by excisions, additions, or substitutions create no discrepancy between the title and the act.* So an act entitled "act to amend" a former act, and containing nothing not germane to the act amended, is valid;† but such an act cannot embrace any matter not expressed in the title of the former act.‡ But if the title of the original act is sufficient to embrace the provisions contained in the amending act, it is unnecessary to inquire whether the title of the amending act would of itself be sufficient.§ But the titles of both acts may be looked to in a proper case.||

A new statute on the subject of an old one may properly contain a clause repealing it, though such repeal is not indicated by the title.¶

When the title contains an obvious mistake, which could not have misled anyone, the act will not be held void,** and a mistake in the title of an act, as approved by the governor, will not invalidate it, if it was correct as passed, and the mistake was not misleading in its character.††

It is not required that a bill shall preserve the same title through all its stages in both houses, and any slight change thus made, not affecting its obvious meaning, will not invalidate the law.‡‡ If the title is changed after the bill has passed one house, and before it is sent to the other, this change will not avoid the act, if the title, after the change, is

* *Robinson vs. Lane*, 19 Ga. 337; *Hill vs. Commissioners*, 22 *id.* 203.

† *Swartwout vs. Michigan R. R. Co.*, 24 Mich. 389; *Harrington vs. Wands*, 23 *id.* 385; *Austin vs. G. C. R. R. Co.*, 45 Texas, 236; *State Line R. R. Co's Appeal*, 77 Penn. St. 429; *Church street in re*, 54 *id.* 353; *Dorsey's Appeal*, 72 *id.* 192; *Barton vs. Pittsburg*, 4 Brewster, 373.

‡ *Chiles vs. Monroe*, 4 Mete. Ky. 75.

§ *Brandon vs. State*, 16 Ind. 197; *State vs. Bowers*, 14 *id.* 195.

|| *Jones vs. Mayor*, 25 Ga. 610.

¶ *Gabbert vs. Jeffersonville R. R. Co.*, 11 Ind. 365.

** *Gilbert vs. Belcher*, 1 Bush, 145.

†† *People vs. Supervisors*, 16 Mich. 254.

‡‡ *Walnut vs. Wade*, 103 U. S. 692; *Plummer vs. People*, 74 Ill. 361.

sufficient to call the attention of the latter to the provisions of the bill, the title, both before and after the change, being sufficiently specific for that purpose.*

In the absence of proof by the journals, it will be presumed that the title of the bill as passed was the same as appears by the act as passed;† and when it appears by the journals that a bill was amended by striking out all after the enacting clause, and inserting a new bill, it cannot be presumed that the matter inserted was upon a different subject from that stricken out, especially when the matter inserted is consistent with the title borne by the bill both before and after the amendment.‡

It is well settled that when a part of a statute is unconstitutional, because not expressed in the title, the courts are not authorized to declare the remainder void, unless the various provisions are so connected in subject-matter, means, or purpose, that it cannot be presumed that the legislature would have passed the one without the other.§

But when the act is composed of a number of discordant and dissimilar subjects, so that no one can be clearly recognized as the controlling or principal one, the whole law is void;|| and if the purpose of the act is to accomplish a single object only, and some of its provisions are void, the whole act must fail unless there be sufficient remaining to effect that object without the invalid portion.¶

* *Binz vs. Weber*, 81 Ill. 288.

† *Binz vs. Weber*, *ubi sup.*

‡ *Miller vs. State*, 3 Ohio St. 475.

§ *Middleton ex parte*, 82 N. Y. 202; *Gordon vs. Cornes*, 47 *id.* 617; *People vs. Bull*, 46 *id.* 69; *Allegheny Home's Appeal*, 77 Penn. St. 77; *Allegheny City vs. Moorehead*, 80 *id.* 118; *People vs. Briggs*, 50 N. Y. 553; *People vs. Comrs.*, 53 Barb. 70; *Sackett Street, in re*, 74 N. Y. 95; *Van Antwerp ex parte*, 56 *id.* 261; *Gibson vs. Belcher*, 1 Bush, 147; *Fuqua vs. Mullen*, 13 *id.* 467; *Davis vs. State*, 7 Md. 151; *Berry's Appeal*, 41 *id.* 446; *ex parte Pollard*, 40 Ala. 77; *Mayor vs. State*, 4 Ga. 26; *Binz vs. Weber*, 81 Ill. 288; *Sedgwick vs. Bailey*, 13 Kansas, 600; *Swayze vs. Britton*, 17 *id.* 625.

|| *Davis vs. State*, 7 Md. 151.

¶ *Ex parte Towles*, 48 Texas, 413.

It only remains to be said, that notwithstanding the extremely liberal construction that has been placed on this constitutional provision, such has been the carelessness on the part of legislators, or their willingness to incur risks in securing the passage of favorite measures, that the books contain many decisions holding statutes or parts of statutes void for a disregard of its terms.

PAPER

READ BY

THOMAS J. SEMMES.

The Civil Law as Transplanted in Louisiana.

Although the Civil Code of Louisiana is subject to criticism, its excellence, recognized by distinguished jurists, is attested by the fact that no radical change has been made since its adoption in 1825, save the alterations resulting from the abolition of slavery. In other respects the hand of innovation has lightly touched it, the amendments during a period of fifty-seven years being few and unimportant.

Although it deals in definitions and explanations to a considerable extent, and in that respect may be considered, according to Mr. Austin's standard, an improvement on the European codes, yet its principles and distinctions are borrowed from the ancient Roman law, and presuppose a knowledge of it, as modified by the jurisprudence of France and Spain.

This unwritten law constitutes a subsidiary system of jurisprudence, let in by the side of the code, and it governs in the absence of express legislation.

This defect, if defect it be, is not so great as might be imagined; for the Roman law, or at least that portion of it which was made by the writings or opinions of juriconsults, and which is styled Pandect law, is the most coherent body of law of which we have knowledge. "Although it was made in succession by a series of juriconsults continuing for more

than two centuries, each of these juriconsults was so completely possessed of the principles of the Roman law, and they were all so completely masters of the same mode of reasoning from and applying those principles, that their successive works have the coherency commonly belonging only to the productions of one master mind."

"Leibnitz and others had remarked that of the forty juriconsults or thereabouts, of excerpts from whose writings the Pandects are composed, the passages from any one are so like those from all the others in style and manner, that it is impossible from internal evidence to distinguish them. Leibnitz expressed this by rather an odd phrase, borrowed from the Roman law itself, calling them fungible persons, *res fungibiles* being the technical term for articles which are bought and sold *in genere*, and not individually."

"Each of these writers was master of the Roman law in its full extent. Each had the whole of its principles constantly present to his mind, and could argue down from them with the greatest certainty."

It was for this reason Leibnitz said, "that after the writings of the geometricians, there is nothing extant comparable for force or subtilty with the writings of the Roman juriconsults; so much nerve is there in them, and so much profundity." This was due to the influence of stoicism. "In general, at Rome, a small number of men given up to meditation and enthusiasm preferred Pythagoras and Plato; men of the world and those who cultivated the natural sciences were attached to Epicurus; orators and statesmen to the new Academy; lawyers to the Portico." (Degerando, *Hist. de Philosoph.*, vol. iii., p. 196.) Cicero compares the Stoics and Peripatetics, and praises the precision of the former. In his *De Claris Oratoribus*, he says:

"*Omnes fere stoici prudentissimi in disserando sint, et id arte faciant, sintque architecti pene verborum; iidem traducti a dis-*

putando ad dicendum, inopes reperiantur; unum excipio, Cato-
nem. * * * *

Peripateticorum institutis, commodius fingeretur oratio * *
nam ut stoicorum astrictior est oratio, aliquantoque quam aures
populi requirunt; sic illorum, liberior et latior, quam patitur,
consuetudo judicorum et fori."

During the period in which the Louisiana Code has endured almost intact, the spirit of reform in Great Britain and all the common law states of this Union has revolted against the pedantry, the fictions, the feudal conceits, and the artificial theories, with all their train of intricate and unintelligible modes and distinctions, which learned judges had vainly attempted to adapt to the wants of modern civilization and has substituted in their place a simplicity suggestive of its classic origin, and bearing the impress of minds enriched by the study of the Roman law.

My object, however, is not to eulogize the Roman jurisprudence, or to compare it with the common law, whose principal merit, its advocates think, consists in its being unwritten; not reflecting that case law, as Mr. Maine says, is only different from code law because written in a different way.

An attempt to compare the two systems would, I fear, encounter vigorous outcries from those who fancy the perfection of a legal system is to be found in Magna Charta, extorted from King John by barons and nobles, few of whom could write their names, and most of whom despised lawyers and legal science.

This paper has been prepared at the suggestion—I might almost say at the request—of the committee, who desired that I should bring to the attention of the Association the existing law of Louisiana, in so far as it differs from the law of other states of the Union.

I recognize the difficulty of accomplishing the object, for

the field of differentiation is vast, and therefore the sketch must necessarily be meagre and imperfect.

The Louisiana Code consists of a preliminary title and three books :

The first book treats of persons, including corporations.

The second book treats of things, and of the different modifications of ownership.

The third book treats of the different modes of acquiring the ownership of things.

1. The law of persons, in Louisiana, differs but little from that of other states.

The husband of the mother is considered as father of the child conceived during marriage, and the husband cannot, by alleging his natural impotence, disown it, nor can he disown it for cause of adultery, unless its birth has been concealed from him. A child born within six months after marriage may be disowned, but in no case can the father dispute the legitimacy of the child unless he does so within one month after its birth, if he be present; or within two months after his return, if he be absent at the time of birth; or within two months after the discovery of the fraud, if the birth of the child was concealed from him.

If the husband die before the expiration of the time indicated, two months are granted to his heirs to contest the legitimacy of the child, to be counted from the time when the child takes or attempts to take possession of the estate.

The legitimacy of a child born more than three hundred days after the dissolution of the marriage may be questioned; so also when the presumption of paternity is destroyed by the remoteness of the husband from the wife, so as to render cohabitation physically impossible.

This bastardism can only be impressed on the child conceived in wedlock, by judicial proceedings instituted to that end within the period mentioned—his status can be ques-

tioned in no other way. But this action *en désaveu de paternité* is of very rare occurrence; no such suit is to be found in the Louisiana Reports; but about twenty years ago, the distinguished journalist and publicist, Emile de Girardin, whose first wife was a wit and a beauty, having lived in France separate from his second wife, an English woman, who maintained an establishment in London, produced a sensation in the fashionable circles of Paris by a judgment of disavowal, obtained by him against the child of his second wife, born during the second marriage. The proceedings authorized by the Legitimacy Declaration Act of England, passed in 1858, and by most of the European codes, are similar in principle to the action *en désaveu*. Judgments in such proceedings establish the status of the parties, and are treated as judgments *in rem*, binding on all the world, as was held in Kosciusko's case, 12 Howard, 430.

The code admonishes the wife that she is not at liberty to marry again until ten months after the dissolution of the preceding marriage. This *annus luctus* of the Romans (for the old Roman year was ten months) is designed to prevent a person from being, as Blackstone says, "more than ordinarily legitimate," and according to Coke, invested with the Englishman's glorious common law privilege of selecting either of two fathers.

Children born out of wedlock, of persons capable of contracting marriage, may be legitimated by the subsequent marriage of their father and mother, if the latter acknowledge them in the contract of marriage, or prior thereto, by an act passed in presence of a notary and two witnesses. Incestuous and adulterous bastards cannot be legitimated, nor can they be acknowledged, nor can they inherit. The Code of 1825 prohibited marriage between the white and colored races; the barrier was removed in 1870. A marriage since then, it has been recently held, will legitimate children

born while the prohibition was in force. (Suc. of Caldwell, 34, A. 268.)

Fathers and mothers have, during the marriage, the enjoyment or usufruct of the estate of their children until their majority or emancipation.

Emancipation is a judicial act which liberates the minor from the paternal power and of that of tutorship, and confers on him the right to govern himself and administer his property. Emancipation is a Roman expression, but it has lost its primitive significance. Roman emancipation put an end to the paternal power, but so far from terminating that of tutorship, it was the commencement of it, if the emancipated son was a minor under the age of puberty.

A minor of either sex is emancipated by the fact of marriage, but this emancipation is not absolute; it does not confer the power of alienation of immovables.

A qualified emancipation may be granted by the parents to a minor who has attained the age of fifteen years; it is rarely applied for, and is subject to revocation for cause; but at the age of eighteen he can obtain an unlimited emancipation by decree of the court, with the consent of his parents or his tutor.

A marriage contracted in good faith, although declared null, nevertheless produces its civil effects as to the parties and their children; if only one of the parties acted in good faith, the civil effects are to be confined to that party and the children born of the marriage. This is called a putative marriage.

So that where a man married a second time, while his first marriage was undissolved, and the second wife acted in good faith in contracting the marriage, it was decided that the lawful wife and the wife *de facto* were each entitled to one-half of the community property, and that the children of each marriage were entitled as heirs-at-law to succeed to the separate property of their father.

This doctrine enabled Mrs. Gaines to recover the estate of her father, notwithstanding her mother was not divorced from her first husband at the time she married Daniel Clark.

The minor being incapable, a power has been organized by the law to protect him and give him a representative. The power is tutorship, the representative a tutor.

To understand to what sort of power a minor is subjected, we must distinguish three hypotheses:

First. When father and mother are living, the minor is subjected to paternal power without tutorship.

Second. One of the parents being dead, the other surviving, he is subjected to the paternal power and tutorship at the same time.

Third. Both parents being dead, he is subjected to tutorship only. Tutorship is a protective power, as its name indicates. "*Appellantur enim tutores quasi tutores, atque defensores.*" (*Inst.*, lib. 1, tit. 13, sec. 2.)

In the organization or government of tutorship there are three classes of agents, three orders of authorities: First, the tutor; second, the family meeting; third, the under-tutor. I omit the judicial authority, which, however, has an all important function to perform, that of confirmation.

The tutor is the executive power; he represents the minor. The family meeting is the deliberative body, which votes the funds and holds the purse-strings. The under-tutor is the watchdog or supervisor of the tutor.

The under-tutor cannot act for the minor, except when his interests are opposed to that of the tutor.

The tutor's power is one of administration, and he can do all acts except those of ownership; they require the advice of a family meeting and the approval of the court.

The tutor, therefore, cannot alienate or mortgage the minor's immovables, nor borrow money or purchase an

immovable for him, nor expend more than his annual revenues, nor compromise his rights without the advice of a family meeting, homologated by the court.

He must annually invest the surplus funds of the minor in state bonds or mortgages.

The family meeting is composed of five relations designated by the court. They assemble in a notary's office, and after being sworn, deliberate on the affairs of the minor in the presence of the under-tutor. The result of the deliberations is reduced to writing, and submitted to the court for approval.

To protect the minor from the undue influence of his tutor, the code provides that "every agreement which may take place between the tutor and the minor arrived at the age of majority, shall be null and void, unless the same was entered into after the rendering of a full account and delivery of the vouchers, the whole being made to appear, by the receipt of the person to whom the account was rendered, ten days previous to the agreement." (C. C. 361.)

Nor can a minor, until such final settlement, make a gift to his tutor, either by donation *inter vivos*, or testament. (C. C. 479.)

The second book of the code treats of things and the different modifications of ownership.

The idea intended to be conveyed by the term "thing" is better expressed by the French word *bien*, because "thing" comprehends all created objects, and not merely those which can become the property of man.

The word is used in the code to designate those objects which are useful to man, and in which he can acquire a right of property.

Things are corporeal and incorporeal, movable and immovable.

Things are immovable by their nature, such as lands; or by their destination, or by the object to which they apply.

Things placed on a tract of land by the owner thereof, for its service or improvement, are immovable by destination; they are movables united to a thing immovable by nature; hence animals intended for cultivation, implements of husbandry, seed, fodder, and manure are immovables by destination. The *villein regardant*, at the common law, was an immovable by destination. Mills, kettles, vats, and machinery, and such movables as the owner has permanently attached to a building, become immovable by their physical accession to the soil. The attachment is considered permanent if the movables are affixed with mortar or plaster, or cannot be removed without being broken or injured or without injury to the building.

It is thus perceived that movables may be immobilized. This doctrine applies only to such movables as are placed on the land for its service or improvement by *the owner thereof*; it has no application to a tenant who, by virtue of article 2,726, has a "right to remove the improvements and additions which he has made to the thing let, provided he leave it in the state in which he received it. But if these additions be made with lime and cement, the lessor may retain them on paying a fair price." To convert a movable into an immovable, the attachment must be for a permanent purpose, and therefore trees in a nursery, for sale, are not immovables.

It seems to me these regulations, for simplicity and exactness, are preferable to the complicated and uncertain fixture doctrine of the common law.

Things which are immovable from the object to which they apply are incorporeal rights, such as the usufruct of an immovable thing, a servitude established on an immovable estate, or an action for the recovery of such estate. The Roman law applied the terms movable and immovable only to corporeal objects, but the ancient French law extended it to incorporeals.

The French lawyers reasoned that a right in itself was an abstraction ; that its existence could not be conceived unless it was realized by its application to some external object.

Hence they considered it perfectly natural to qualify the right according to the nature of the object. Hence the maxim to be found in Pothier : "*Actio quæ tendit ad mobile mobilis est ; actio quæ tendit ad immobile, immobilis est.*" (*Pothier de la Commun*, No. 69.)

Indeed, the absolute right of property in an immovable, scientifically considered, is an incorporeal right. It is the type, the standard of all *jura in re* ; and the reason why it is not classed as an immovable from the object to which it applies, is that the right absorbs all the utility of the thing ; it is confounded with the thing which is the material representative of the right, so that an identification takes place between the right of property and the thing subjected to it ; and hence we say "my house," in order to express the absolute right of property in the house. The right is thus materialized, and becomes a corporeal thing, and is classed as an immovable by nature.

Ownership is defined in our code to be "the right by which a thing belongs to some one in particular, to the exclusion of all other persons." (Art. 488.) This definition is drawn from Pothier. The owner is the master of the thing, the *dominus*, and has absolute dominion over it.

In the *Institutes* of Gaius and Justinian, there is no definition of the right of property or dominion, while Blackstone describes it to be "that sole and despotic dominion which one man claims and exercises over the external things of the world, in total exclusion of the right of any other individual in the universe." (Vol. i., p. 2.) This smacks so strongly of Pothier, that one is tempted to suspect the source whence the polished English commentator drew his inspiration.

The Louisiana Code divides ownership into perfect and imperfect. Ownership is perfect when it is perpetual and unincumbered with any real right towards any third person. It is imperfect when it is to terminate at a certain time, or on a certain condition, or is charged with any real right towards a third person, as a usufruct, use, or servitude.

Perfect ownership gives the right to use, enjoy, and dispose of the thing in the most unlimited manner, provided it is not used in a way prohibited by the laws or ordinances. (Art. 491, C. C.) This description of the rights of perfect ownership corresponds to the definition of ownership given in the French Code. (Art. 544.)

These descriptions are drawn from the civilians, who have improved upon the Roman idea of the *plena potestas* of the owner, which implied the power to use, to enjoy, and to abuse his property. The Latin word *abuti* did not signify a reprehensible use of the property, nor its destruction, but a final and definitive use thereof by alienation; for the Roman law proclaimed as a maxim, "*Expedit rei publicæ re sua ne quis male utatur.*" (Just., p. 2, *De his qui sui vel alien.*)

This limitation on the right of property is not recognized in Louisiana, for if the government should become the judge of an abuse of the right of property, it would not be slow to constitute itself the judge of its use, which would be destructive of the true idea of property and of the liberty of its owner.

Ownership carries along with it the right to all the thing produces, and to all that becomes united with it, either naturally or artificially. This is called the right of accession.

The exception to this rule is that of a *bona fide* possessor, who is entitled to the fruits and revenues of property so long as he is ignorant of the defects of his title. He is a *bona fide*

possessor who possesses as owner by virtue of a title sufficient in terms to transfer the property, but of the defects of which he is ignorant.

The following estates, or real rights, may be carved out of absolute ownership, usufruct, use, habitation, and servitude:

When an immovable is subject to a usufruct, the owner is said to possess the naked ownership.

Usufruct is the right of enjoyment of a thing, the property of which is vested in another, and to draw from the same all the profits, utility, and advantages which it may produce, without altering the substance of the thing.

That is the definition of a perfect usufruct, and applies to land or other property, which can be enjoyed without change of substance; but an imperfect usufruct may be established on things which would be useless to the usufructuary, if he did not consume them, such as money, grain, liquors.

Imperfect usufruct, therefore, transfers the ownership of things subject to it, but the usufructuary is bound to return to the owner the same quantity, quality, and value, or their estimated price, at the expiration of the usufruct.

Usufruct is an incorporeal thing, because it consists in a right, and may be established by contract, by donation, by testament, or by law; it is an immovable if established on an immovable; a movable if established on that species of property.

It is susceptible of alienation, and if established on an immovable it can be mortgaged; it may be seized for debt, but the usufruct given by law to parents on the estate of their minor child is exempt from seizure.

It expires at the death of the usufructuary, and any words of inheritance contained in the title establishing it are considered not written. It is a real right, but is also a personal servitude, in the sense that its duration is limited by the life

of a person, and it is not transmissible; and if that person be a corporation, the usufruct is limited to thirty years, the policy of the law forbidding a perpetual divorce of the usufruct from the naked ownership.

The right of use is also a real right, but a personal servitude; it is a restricted usufruct; it is the right given to any one to make a gratuitous use of a thing belonging to another, or to exact such portion of the fruits it produces as is necessary for his personal wants and those of his family.

The right of habitation is also a real right, but a personal servitude; it is the right of dwelling gratuitously in a house the property of another.

Both of these rights are extinguished in the same manner as the usufruct; they are exclusively personal rights, and cannot be alienated or leased or seized under execution.

Servitudes which affect lands are of two kinds: personal, consisting of usufruct, use, and habitation, which terminate with the life of the beneficiary; real or predial, being those which the owner of an estate enjoys on the neighboring estate, for the benefit of his own estate. They are called predial because they are due from one estate to another, and not to the owner personally.

There must be two different estates belonging to two different persons; and if the servitude is established in favor of the person who is owner, and not of his estate, it is personal, and expires with his life.

The predial servitude is purely an accessorial, incorporeal real right, which has no existence separate from the land which it qualifies, and therefore cannot be sold or mortgaged separate from the land to which it adheres; and it remains the same, whatever change may take place in the owners of the two estates; nor is it susceptible of usufruct or of being itself subjected to another servitude.

Its chief characteristic is its passivity. It consists in *patiendo non in faciendo*. The owner of the servient estate is not required to do anything; to abstain or to tolerate are his duties.

Servitutem non ea natura, ut aliquid facias quis, sed ut aliquid patiatur aut non faciat. (Pomponius, l. 15, p. 1, *Dig. de servitut.*)

The principal predial servitudes are the rights of light, of view, of drip, of drain, of support, of passage, of way, of conducting water, of drawing water, of pasture, of burning brick, of taking earth or sand, etc. An essential condition of their existence is vicinity, so that a direct relation between the two estates can be established.

The code divides servitudes into three classes: 1, Urban and rural; 2, continuous and discontinuous; 3, apparent and non-apparent; but writers add a fourth class, termed by them positive and negative.

1. Urban servitudes are established for the use of houses, whether situated in the city or country, while those for use of lands are termed rural.

2. Apparent servitudes are such as can be seen by exterior works or signs, such as a door, window, or aqueduct. Non-apparent servitudes are such as have no exterior sign of their existence, such as the restriction on the right to build.

3. A continuous servitude is one whose use is or may be continual without the act of man, such as aqueduct, drain, view; a discontinuous or interrupted servitude is such as needs the act of man to be exercised, such as right of way.

4. Rigorously speaking, all servitudes are negative, as they do not require the owner of the servient estate to do anything; but a negative servitude is where neither the owner of the dominant nor of the servient estate is required to do anything, as, for instance, *not* to build; while a positive servitude exists where the owner of the dominant estate is re-

quired to do something, as, for instance, to pass over the land, and imposes on the owner of the servient estate submission to some act.

Whether servitudes could be acquired by prescription was matter of grave discussion among Roman writers. Paulus says: "*Incorporales tamen sunt, et ideo usu non capiuntur*;" in France the maxim prevailed, "*Nulle servitude sans titre*."

Our code provides that continuous and apparent servitudes may be acquired by possession of ten years, while continuous non-apparent servitudes, and discontinuous or interrupted servitudes, whether apparent or not, can only be acquired by title.

Continuous non-apparent servitudes and discontinuous servitudes cannot be acquired by prescription, because there are no external works or signs which reveal their existence; and not being public or manifest, one of the essential conditions of possession as the foundation of prescription fails, for "such possession must be continuous, uninterrupted, peaceable, public, and unequivocal." (C. C., art. 3487.)

Besides, the law presumes that all acts of interrupted servitudes—such, for instance, as the act of passing over lands—are allowed by tolerance, and are the result of familiarity and good neighborhood, and therefore, being precarious acts, they do not constitute legal possession. This is good policy, for otherwise the right of property would be defiant, egoistic, intractable, and forbid the allowance of good offices.

There is no other *jus in re* or modification of title to property recognized by the law than those I have mentioned; hence the simplicity and intelligibility of titles in Louisiana.

There are no trusts or trustees, no separation of the equitable from the legal title, because there is no distinction between law and equity; there are no contingent remainders, or executory devises, or springing uses; no rule in Shelley's

case; no feoffees to uses; no Chudleigh's case, with its *scintilla juris*—a notion as imaginary as the Utopia of Sir Thomas Moore.

The only estates known in Louisiana are the absolute property or fee-simple title; the usufruct, which corresponds in the main to the common law life estate; the rights of use and habitation, and the servitudes; for a lease of immovable property is not an estate in the land, but a personal contract.

A mortgage is not a conveyance of the land, but a mere pledge, the title remaining in the mortgagor, and therefore, in case of his death, a sale of the mortgaged property to pay debts made by order of the probate court, transfers an unincumbered title to the purchaser, the mortgage being shifted from the property to the proceeds of sale.

The fact is, a mortgage right is not a *jus in re*; that is to say, it has no independent existence which effects a dismemberment of the dominion or absolute ownership, like usufruct, use, or servitude, but it is an accessorial real right, which restrains and limits the full and free exercise of the power of the owner. In addition to the mortgage, the code authorizes immovables to be affected by the contract of antichresis, which in some particulars resembles a mortgage.

It differs from a pledge, because that species of contract is confined to movables. It differs from a mortgage, because the antichresis creditor must be put in possession; and in this respect it partakes of the character of pledge, or a Welsh mortgage, but the antichresis merely confers on the creditor the right of reaping the fruits and revenues of the immovable given him in pledge. It does not, like the pledge or mortgage, vest in him a right of preference over other creditors on the *corpus* of the property, and therefore he has no power to cause the property to be seized and sold in default of payment.

Possession also is a real right. What is the foundation of possession, has excited much controversy and metaphysical discussion. Some regard possession as a condition of fact, others a condition of right; certain it is that juridical possession is different from the mere fact of detention or corporeal prehension.

Juridical possession is physical detention or control, accompanied by the *animus* or will to appropriate as owner; the will to appropriate as owner vitalizes physical detention, and converts it into juridical possession.

A man who possesses a thing for another, merely represents another, and his possession is the possession of that other; he has no possession of his own.

Possession, *animo domini*, is recognized by law; it is protected by the right of self-defense, by the right of action, and by the right of juridical assistance to uphold it; it ripens into ownership by the effect of time; and if in good faith, the possessor is entitled to the fruits gathered during his occupancy.

As I have said, there are no other real rights or independent *jura in re* or dismemberments of ownership than those I have mentioned; but the field for the modification of personal relations to property by contract is almost unlimited. It is important to bear this in mind, because the difference between a real and personal right is capital. Real right produces *dominium*; personal only *obligatio*; the former makes the proprietor; the latter, the creditor.

The owner of a real right advances towards the thing, which is its direct object, all powerful and absolute, without the mediation of any debtor; hence he can follow it into whosoever hands it may be. He is entitled to it in preference to creditors, and it is indivisible as against all persons. Very different is a personal obligation. The creditor cannot follow in the hands of third persons the property alienated by the

debtor. He has no greater right than other creditors, prior or posterior to him, since all hold by the same title, *ex persona debitoris*; and his right is divided on the debtor's decease into as many fractions as there are heirs; for the person of the debtor is then juridically divided into as many persons as there are heirs.

I now turn to the different modes of acquiring ownership, treated of in the third book of the code.

The code enumerates three modes of acquisition :

1. Succession, legal or testamentary.
2. By the effect of obligations.
3. By the operation of law.

In the Roman law a contract did not effect a change of title to property, the object of the contract. This change of title was only produced by some fact posterior to the contract, such as delivery. In Louisiana the translation of title to a determinate thing is the direct and immediate effect of the contract.

When the object of the contract is not a determinate thing, but only one of a species, it is delivery which effects the transfer of ownership.

Things are acquired by gratuitous or onerous title. When I give a value in exchange for what I acquire, it is an acquisition by onerous title. Donation is a mode of acquiring by gratuitous title.

There are many differences between these two modes of acquisition. A sale is formed by mere consent of the parties proved in any mode. Donation is a solemn contract which can only be proved by an authentic act; that is to say, by an act passed in the presence of a notary and two witnesses. Such an act is closely assimilated to a judicial record, and constitutes full proof against the parties. Any other form of donation *inter vivos* is null, except the manual gift of corporeal movables accompanied by delivery.

In onerous contracts, any condition contrary to law and good morals vitiate them; while in donations, such conditions are reputed not written; the donations stand, but the conditions are null.

There is a greater capacity to dispose or acquire by onerous, than by gratuitous title. For instance, none of the limitations contained in articles 1,481, 1,483, 1,486, 1,488, 1,489 and 1,490 apply to sales between the same parties. Article 1,481 prohibits a gift to a concubine exceeding one-tenth of the estate of the donor.

Article 1,483 prohibits gifts to natural children by their father beyond what is necessary for maintenance, whenever the donor leaves legitimate descendants.

Article 1,486 prohibits gifts to natural children by their father in excess of one-fourth of the estate of the donor, if he leave legitimate ascendants, or brothers, or sisters, or descendants from them; or in excess of one-third, if he leave more remote collateral relations. In all cases in which the father gives to natural children the portion permitted him by the law to dispose of, he is obliged to give the rest of his property to his legitimate relations, or to some public institution; every other disposition is null. (Art. 1,487, C. C.) It is manifest that the policy of such enactments is in the interest of morality and of society. Immorality, which darkens the soul, impairs the freedom of gratuitous disposition.

Article 1,489 prohibits donations to the professionally attending surgeons, physicians, or ministers of the gospel, if made during the last illness of the donor.

Article 1,490 avoids a donation made to a stranger, when the laws of his country prohibit a similar donation, in favor of a citizen of Louisiana.

On the other hand, sales between husband and wife are prohibited, while donations are allowed.

Things are also acquired by universal title or particular title.

I acquire a universality when a person transmits to me not *such* an object rather than another, but the whole or the universality of his property, or an aliquot part of the whole, such as a third or a fourth of all his property.

I acquire by particular title when a person gives to me one or many determinate things, considered individually or isolatedly.

The interest in this distinction consists principally in the obligation imposed on those who acquire by universal title to pay the debts of their author; while no such obligation is attached to an acquisition by particular title.

The *universitas juris* occurs when one man is invested with the legal clothing of another, becoming, not at successive periods, but at the same moment, *uno ictu*, subject to all his liabilities, and entitled to all his rights.

To constitute universal succession, the transmission of the aggregate of rights and duties must take place at the same moment and in virtue of the same legal capacity in the recipient.

The succession of an assignee in bankruptcy to all the property of the bankrupt is a universal succession, although he is liable for debts only to the extent of the assets.

In consequence of the difference between realty and personalty at common law, there is no universal succession, though there is a succession under universal title, as the title to all the personalty vests in the executor or administrator, and all the realty in the heir. Besides universal legatees or instituted heirs, there are legatees under universal title, where a testator bequeaths a half or a third of all his immovables or all his movables, or a fixed proportion of all his immovables or of all his movables. (C. C. art. 1,612.) Such legatee by universal title is bound for his proportion of debts.

Inheritance is a universal succession occurring at death. The heir, or group of heirs, if there be more than one, represents the dead man and at the moment of his death; is clothed with his entire legal person, and steps into all his rights and duties. Such inheritance is expressed by the French axiom, "*Le mort saisit le vif.*"

It is one of the most important principles of the civil law that the debts are a charge on the universality of goods, on the entire patrimony, and not on any specific object separately considered—" *Æs alienum est onus universi patrimonii, non certarum rerum.*"

Intestate succession is in general a mode of acquisition by universal title; the exception to the transmission of the universality to the intestate's heirs, is the successoral return provided for in articles 908 and 909.

These articles also constitute the only exception to the rule mentioned in article 885, which declares "that the law does not take into consideration the origin or the nature of the property in order to regulate the succession."

Articles 908 and 909 provide "that ascendants, to the exclusion of all others, inherit the immovables given by them to their children or their descendants of a more remote degree, who die without posterity, when these objects are found in the succession."

"Ascendants have also the right to take from the succession of their child or descendant, who dies without issue, the dowry they may have settled in money upon her."

Succession is the transmission of the universality of rights and obligations of the deceased to his heirs. ("*Hæreditas nihil aliud est quam successio in universum jus quod defunctus habuit.*")

There are three sorts—testamentary, legal, and irregular. The legal succession is founded on legitimate blood relationship; the irregular is that established by law in favor of certain persons, or of the state, in default of relations.

Natural children, duly acknowledged, but not adulterous or incestuous bastards, are irregular heirs. They inherit from their mother, to the exclusion of all relations except lawful children. They inherit from their father, to the exclusion of the state only.

In what are called the customary provinces of France, in ancient times, there was no such thing as testamentary heir. In those provinces it was said: "*Heredes gignuntur, non scribuntur*," or "*Deus heredem facere potest, non homo*."

The Louisiana Code admits the institution of an heir by testament, as was the fashion—I might almost say the passion—in ancient Rome; for a singular horror of dying intestate characterized the Roman.

This vehement distaste for an intestacy, to which Roman society remained constant for so many ages, has been attributed to the unnatural distribution of property by the ancient *jus civile*, which recognized only three orders of successors—unemancipated children, the nearest grade of the agnate kindred, and the gentiles.

Emancipated sons were excluded by the nearest grade of the agnate kindred, and no part of the inheritance was given to any relative united to the deceased through female descendants.

All other branches of the family were excluded, and the inheritance went to the gentiles, or entire body of Roman citizens bearing the same name as the deceased.

In the ascertainment of heirship, the civil law method of computing degrees of consanguinity is adopted.

In case of brothers and sisters of the whole and half blood inheriting from one another, the succession is first divided equally between the paternal and maternal lines. German brothers and sisters take part in both lines; the paternal and maternal brothers and sisters each in their respective lines only.

A succession is acquired by the heir, legal or testamentary, immediately on the death of the deceased. He is seized from that moment of the entire estate, real and personal.

By the Roman law, and under the Code of 1808, which was the first attempt at codification in Louisiana, until the acceptance or renunciation of the heir, the succession was considered a fictitious being, *hereditus jaccens*, representing in every respect the deceased.

But the Code of 1825 considers the heir as having succeeded to the deceased from the instant of his death. Yet the right of the heir is in suspense until he accepts or rejects the succession; if he accepts he is considered as having succeeded to the deceased at the moment of his death; if he renounces, he is considered as never having acquired the succession, and the next heir succeeds, as if he were originally the nearest heir.

But some heirs are unworthy; as, for instance, those convicted of having killed or attempted to kill the deceased.

The unworthy heir remains seized of the succession until deprived of it by a judgment declaring him unworthy.

Children are forced heirs, so that donations *inter vivos* or *mortis causa* cannot exceed two-thirds of the disposer's property, if he leaves one child, one-half if he leaves two children, or one-third if he leaves three or any greater number.

Father and mother, if their be no children, are forced heirs to the extent of one-third. On the death of the donor, if the donations made during his life exceed the disposable portion, the forced heir can, by suit for reduction of donations, compel the donees to make good his legitime.

So that if a man gives away in his lifetime \$100,000, and dies insolvent, his child may recover one-third of the amount from the donees. This right is personal to the heir, and cannot be exercised by creditors of the donor; nor can it be exercised until the death of the donor, for it is a right to that portion of the donor's estate reserved by law to his heir.

Forced heirs are so called because the donor cannot deprive them of their portion of the estate reserved to them by law, which is called the legitime.

They may be deprived of the legitime by disinherison for one of the causes enumerated in Arts. 1,621 and 1,623 of the code, which must be expressed in the will, and its existence proved. Among such causes is mentioned the marriage of a minor without consent of parents.

If the heir chooses to accept the succession unconditionally, there is no inventory, no administration, no expense; he is put in possession at once, and represents the person of the deceased, and as such is liable for all his obligations, whether the property inherited be sufficient or not to pay them.

If the heir is a minor, or, being a major, prefers an administration, he accepts with benefit of inventory. In such case he is not put into possession until the estate is wound up by an administrator, who takes an inventory and gives bond, and then the heir receives any surplus remaining as the result of the liquidation. Acceptance with benefit of inventory means that the obligations of the heir are to be limited to the value of the estate inherited by him. Hence an inventory is made of the effects of the succession, and they are sold under order of court, and the heir incurs no responsibility to creditors beyond the amount coming into his hands. An unconditional acceptance renders the heir absolutely liable for all the debts of the deceased, whether the property inherited be sufficient for that purpose or not; there is no inventory in that case, and no administration; hence a minor cannot accept a succession unconditionally.

The system of administration, whether by an executor or administrator, is similar to that in other states, except that the title or legal seizin of all the property, real and personal, is vested in the heir, the administrator having possession,

however, for the purpose of administration, and the probate court orders its sale to pay debts and legacies.

If there are two or more heirs, they inherit equal shares, and become liable each for his virile share of the obligations of the deceased. In other words, all the obligations of the deceased, except such as are indivisible, are split into as many fractions as there are heirs, who become, in fact, separate debtors.

The consequences of this splitting are, 1st, each heir is only bound for his virile share; 2d, if one heir becomes insolvent, it is the loss of the creditor. This supposes that the heirs have accepted unconditionally—that is to say, without benefit of inventory; for if the estate is under administration in the hands of an executor or administrator, the insolvency of one heir does not affect the creditor of the deceased; and even if the heirs should accept the succession unconditionally, the creditor, by demanding a separation of patrimony—that is to say, a separation of the property of the deceased from that of the heirs—can by that means prevent the creditors of the heir from being paid out of the assets of the deceased, to the prejudice of the creditors of the deceased. Such separation of patrimony can also be demanded by the creditors of the heirs.

But if the object of the obligation be not susceptible of a divided execution, then it is said to be indivisible, and each heir is liable for the whole.

In point of practice, this splitting of obligations does not occur except in cases where the heirs are all majors, and accept the succession unconditionally, and take possession of its effects without benefit of inventory. In all other cases there is a judicial administration, and the administrator or executor, as to creditors, represents the entire succession, and the property, real or personal, in his possession, is sold, under decree of court, to pay debts and legacies.

But an executor is regarded as the mandatary of the testator. It is a peculiar sort of agency, as it commences at the period when all other agencies terminate.

If the succession be testamentary, and the instituted or testamentary heirs receive different shares of the universality of the succession—say one is heir for half, one for a quarter, and two others for one-eighth each—the obligations of the deceased are split in the same proportions, and the heirs are liable for debts in those proportions.

A legatee, unless he be a legatee under universal title, is not responsible for debts; he cannot obtain his legacy until the debts are paid. The difference between a testamentary heir and a legatee is that the latter does not participate in the universality of the succession. He takes by particular title, and therefore does not represent the *universum jus* of the deceased.

Entailments, called by the civilians “substitutions,” as well as trusts or *fidei commissa*, are prohibited. “Every disposition by which the donee, the heir, or the legatee is charged to preserve or to return a thing to a third person, is null even with regard to the donee, the instituted heir, or the legatee.” (C. C. 1,520.)

The term “substitution” is derived from *sub institutio*, or secondary institution of heir; as, for instance, I give to A, and if he die without heirs, the estate is to go to B.

To constitute a substitution, three things are required :

1. An obligation to preserve the thing.
2. To preserve it until the death of the donee.
3. To deliver it at the death of the donee to another person.

Such a disposition, it is perceived, ties up the property, prevents its alienation, and designates who shall succeed as heir on the death of the donee.

The prohibition of the code embraces, with the substitutions and *fidei commissa* of the Roman, Spanish, and French

laws, the trust estates of the English chancery system. The prohibition was made in the interest of public order, to preserve the simplicity of titles, which were all allodial.

The distinction between a substitution and the donation of the usufruct to one person and the naked property to another is that, in the latter case, the naked property vests immediately, and there must, therefore, be some person *in esse* at the time the donation goes into effect, having capacity at that time to receive it; whereas the person who is to take under a substitution may be unknown to the donor, or may not be in existence at the time of the execution of the donation.

Wills are treated of in the code under the title of donations *mortis causa*.

The olographic will requires no witnesses. It must be entirely written, dated, and signed by the hand of the testator.

The olographic will is of Roman origin. It was authorized by the Emperors Theodosius and Valentinian, but subsequently Justinian, in the 107th Novel, required witnesses, unless the will was executed by an ascendant for the sole purpose of making a partition of his entire estate among his descendants. By an ordinance of Louis XIII., in 1620, olographic wills were permitted; but in the *droit écrit* provinces, the parliaments, having refused to register the ordinance, it was never enforced. It was not until the Code Napoléon was promulgated, that a will in the olographic form, without witnesses, was valid throughout France.

François Xavier Martin, Chief Justice of Louisiana, died in 1846, leaving an olographic will executed in 1844, when he had become blind, and remained so till his death. Its validity was questioned for want of capacity on the part of

a blind man to make an olographic will, and because he could not read what he had written, and he could not write without the assistance of others to guide his hand. After the most elaborate discussion and a careful scrutiny of the conflicting views of foreign jurists, the Supreme Court maintained the will, partly because the testator himself, having evinced his opinion by writing the will, had great weight as an authority. (*State vs. Martin*, 2 A. 680.)

The code allows a soldier in the field to execute a will in presence of a commissioned officer and two witnesses. It must be signed by the testator, and remains operative for six months after the emergency has ceased.

The nuncupative will, if executed before a notary, must be attested by three witnesses, otherwise by five.

It is called nuncupative because it is read aloud by or to the testator in presence of the witnesses. A will not so read is called mystic, and being signed must be presented by the testator to a notary, and sealed up in presence of seven witnesses. Persons under sixteen years of age, and women, cannot be witnesses. At sixteen, a man or woman, married or unmarried, has capacity to make a will.

The exclusion of women as witnesses is attributed to the influence of the *sacra gentilia* of ancient Rome, when wills were executed subject to the confirmation of public assemblies, to which women were not admitted—"ab omnibus officiis civilibus vel publicis remotæ."

A testament clothed with the formalities prescribed by the law of the place of its execution will be enforced in Louisiana, both as to real and personal property, although it would be void as to form, if executed in the state. This doctrine applies even to citizens of the state who make wills abroad. A will becomes void on the birth of a child posterior to its execution; so that a married man with a fruitful wife might have to make a dozen wills in as many years; and even then

the birth of a posthumous child would frustrate his testamentary aspirations, so that one may die apparently testate, yet become intestate by an event occurring after death.

In point of law, however, a child conceived, if subsequently born alive, is reputed to have been born at the date of conception, and therefore the posthumous child in the case supposed is reputed born before its parents death. Although husband and wife during marriage may make donations to one another, such donations are revocable at the pleasure of the donor; but they cannot by the same will or act of donation make to each other mutual or reciprocal donations or bequests; nor can two or more persons make a will in one and the same act. These prohibitions are founded on the absolute revocability of all wills and of donations *inter vivos* between married persons. Reciprocal wills, or donations between married persons in the same act, carry the implication of mutual understanding or agreement, which is antagonistic to absolute freedom of revocation.

Marriage alone, either of man or woman, will not revoke a will; nor can the testator, by any provision in the will, prevent its revocation by the subsequent birth of a child.

No gift *mortis causa* can be made otherwise than by testament. Every other form is abrogated. (C. C. 1,750.)

A donation *inter vivos* can comprehend only the present property of the donor. If it comprehends future acquired property, it is null as to that.

A donation *inter vivos* is an act by which the donor divests himself at present and irrevocably of the thing given. He may stipulate for the return of the thing to him in case he survive the donee and his descendants; and he may revoke the donation for ingratitude on the part of the donee—that is to say, if the donee attempt to take his life, or is guilty of cruel treatment or of crimes towards him, or if he has refused him food in distress. (C. C. 1,560.)

The donor cannot reserve to himself the usufruct of the thing given ; but on the other hand he cannot divest himself of all his property ; and therefore, unless he reserve enough for his subsistence, the entire donation is void. (C. C. 1,407.) The law will not allow him to strip himself *omnium bonorum*.

There is some modification of the rules governing donations *inter vivos* in general, when those donations are made in favor of marriage to the husband or wife by fathers, mothers, or other ascendants, and even by strangers. In such donations, the donor may give the whole or a part of the property he shall have on the day of his decease for the benefit of the parties to the marriage, and in case the donor survive the donee, for the benefit of the children or other descendants to proceed from that marriage. Such donations may embrace property acquired and to be acquired ; and they are irrevocable only in the sense that the donor can no longer dispose of the objects comprised in the donation by gratuitous title, but he retains the full liberty of selling and mortgaging, unless he has formerly renounced that right.

It is perceived that this class of donations is peculiar. In a donation *inter vivos* proper, the donor divests himself at present and irrevocably of the thing given, and it cannot embrace future acquired property ; whereas, the donation in favor of marriage may embrace present and future property, and is revocable to the extent to which the power to alienate is reserved to the donor, and inures to the benefit of children not *in esse* at the date of the donation ; and in case the donee dies without children or descendants, the donation is of no effect.

It is a hybrid donation, called by the French, *l'institution contractuelle*, or the institution of heir by contract.

It confers an eventual right to the succession of the donor, who cannot give away or bequeath his property to a third

person, though he may sell it; unless he has expressly debarred himself of that right: but while the donor is alive, the donee has no right in the property, and in this respect his interest resembles that of a presumptive heir. His right is a right to the faculty of becoming heir, if he is alive at the death of the donor.

There is also a limitation on the power of married persons to make donations to one another, where the donor has children by a previous marriage. In such case the donor can give to the new spouse only one-third of his estate. (Act of 1882.)

A second marriage, where there are children of the preceding marriage, destroys the power of the party contracting it to dispose of the property given or bequeathed to him or her by the deceased spouse. Such property on the second marriage is, by operation of law, vested in the children of the first marriage, and the spouse who marries again has only the usufruct of it. (C. C. Arts. 1,752, 1,753.) These provisions are of Roman origin. The Justinian Code and the 98th Novel first limited the power of donation in case of second marriage. This power was still further contracted by Theodosius the Great, and Theodosius the Second, and Valentinian the Third.

The object of a marriage contract in Louisiana is to designate the property constituting the dowry, which the wife brings to the husband to support the expenses of the marriage. Whatever property is declared in the marriage contract to belong to the wife, or to be given to her on account of the marriage, by other persons than the husband, is a part of the dowry. Such property is called dotal. It can only be settled by a marriage contract, evidenced by authentic act executed before marriage. In no other form is it valid, nor can it be executed after marriage, nor can the dowry be increased during the marriage.

The income of dotal property belongs to the husband, to help him to support the charges of the marriage. He alone has the administration of it.

As a general rule, dotal immovables are inalienable during the marriage. The marriage contract may allow them to be sold, but in such case their value must be invested in other immovables, which become dotal. The purchaser, however, is not bound to see to the application of the purchase money.

Under special circumstances the wife, with the assent of her husband, and on the authorization of the judge of her domicile, given after an examination apart from her husband, may mortgage dotal property to raise money for her own use and benefit.

The wife may also, with the consent of her husband, provide for the establishment of their children by gifts of dotal property. The court, however, may order the sale of dotal immovables at public auction, when necessary for the maintenance of the family or for the payment of ante-nuptial debts of the wife, or for the purpose of making heavy repairs, indispensably necessary for the preservation of the immovables settled as dowry.

The obligations of the husband in respect to dotal property are those of an usufructuary. He becomes owner of the movables valued in the marriage contract, unless the contrary is declared. He is obliged to restore the movables or their value on the dissolution of the marriage, and the wife has a legal mortgage on the immovables, and a privilege on the movables of her husband, for the restitution of her dowry. A legal mortgage is a right of mortgage given by law without any stipulation of the parties. It is also called tacit, because it is established by law, without the aid of any agreement. The wife has also a legal mortgage for the restitution of her paraphernal property; so has a

minor on the immovables of his tutor, and persons interdicted on the immovables of their curators. Formerly this legal or tacit mortgage affected all the immovables of the debtor in the state, without registration; now, provision is made for recording the evidence of claims to which the law attaches a right of mortgage, and thereby the inconveniences of the tacit mortgage system have been reached.

All property belonging to the wife at the time of marriage, or inherited by, or given to her after the marriage, is her separate property, and is called paraphernal or extra dotal. Her husband has no interest whatever in it, nor has she any interest in the property owned by him at the time of the marriage, or subsequently inherited or acquired by donation.

The wife is entitled to the administration of her paraphernal property, and to the enjoyment of the revenues and fruits thereof; but she cannot alienate or mortgage it without the consent of her husband. If he administers it against her will, he is accountable for all the fruits and revenues received by him, and she can restrain him from further interference; but he is not responsible for the ante-nuptial debts of the wife.

Every marriage contracted in the state superinduces of right the conjugal partnership or community of acquets and gains, if there be no stipulations to the contrary in the marriage contract.

All property which is not dotal or paraphernal belongs to the community; that is to say:

First. The fruits of the property of which the husband has the administration and enjoyment of right or in fact. This includes the revenues of the husband's separate property, and of the wife's paraphernal property, if she allows him to administer it.

Second. The produce of the labor or industry of the husband or wife. This includes every species of profit, the result of toil or talent.

Third. All property purchased by husband or wife, unless it be as an investment of paraphernal funds.

Fourth. All donations *inter vivos* or *mortis causa* made jointly to both husband and wife.

Fifth. The value of the improvements put on the separate property of either spouse, and paid for with funds of the community. During the marriage, the title to the community property is vested in the husband. He is the head and master of the community. He disposes of its revenues and alienates its property without the consent of his wife; but he cannot give it away, except for the establishment of the children of the marriage; he may, however, make particular gifts of movable effects.

If the husband should sell or otherwise dispose of the community property for the purpose of defrauding his wife, she is entitled to restitution against him or his heirs on the dissolution of the community. The title of the wife to any special or proprietary interest does not vest until the dissolution of the community; until then she has only a contingent and eventual right in one-half of such of the acquets and gains as may be found in the possession of the community at its termination. Even then her right is contingent on her acceptance of the community, which involves responsibility for one-half the debts, unless she accepts with benefit of inventory, which she may now do. If she does not accept, she is as much a stranger to the property as if no community had ever existed.

The community is dissolved by—1, death of either spouse; 2, a judgment annulling a putative marriage; 3, a judgment giving to the heirs of an absentee provisional possession of his estate; 4, a separation of property, which is effected by a judgment in an action instituted by the wife for that purpose, or flows as a necessary consequence from a judgment of separation *a mensa et thoro*, or of divorce *a vinculo matrimonii*.

It is only the wife who can institute an action for separation of property, and thereby dissolve the community; this right is given to her when the disorder of her husband's affairs induces her to believe that his estate is insufficient to meet her claims against him, or when he neglects to reinvest the dotal effects according to law, or when he is insolvent, and she desires to preserve for herself and her children the fruits of her industry. Such fruits would otherwise fall into the community, and be subject to seizure for the husband's debts.

The policy of the law favors the community, and therefore a separation of property sought for can only be decreed by a court of justice, after hearing all the parties, and on proof of the requisite facts. The community of Louisiana is of Spanish origin and is much more simple than that of France.

Time forbids a discussion of the theory of obligations. For that reason I confine myself to a meagre statement of a few elementary principles.

A civil obligation is defined in the code to be a legal tie, which gives the party with whom it is contracted the right of enforcing its performance by law.

The sources of obligation are five: 1, contract; 2, quasi-contract; 3, offense; 4, quasi-offense; 5, the law.

It is said by Maine that the Greek word *nomos* (law) does not occur in Homer.

The terms "contract" and "obligation of contract" are not to be found in the English Bible or in the writings of Lord Coke; Shakespeare makes Hamlet say, in alluding to the marriage of his mother,

"O such a deed

As from the body of contraction plucks the very soul!"

but the expression refers to the exceptional contract of marriage between royal persons. "Agreement" and "covenant"

were the law terms used by common law writers until within the last two hundred year, and Powell, in the present century, was the first common law author of a treatise on contracts.

Yet neither the term "agreement" nor "covenant" conveys the full and complete idea of a contract as understood by the civilians; for a contract gives rise to civil obligations, and is therefore classed as one of the sources of obligations; and the dominant idea of a civil obligation is the "*juris vinculum quo necessitate astringimur alicujus rei solvendæ, secundum nostræ civitatis jura.*"

The absence of this *juris vinculum* from an "agreement" or "covenant," for any reason whatever, deprives it of the character of a contract, because it is not susceptible of execution by an appeal to the public force of the country through its judicial tribunals. It is for this reason that the public debt of a nation, the holders of which have no right of action, does not fall within the category of civil obligations. The public debt is, as Hamilton said, "A property subsisting in the faith of the government. Its essence is promise. Its definite value depends upon the reliance that the promise will be definitely fulfilled." The government represents the public probity, and its high mission and weighty responsibilities afford guarantees which satisfy creditors as well as society itself.

There are two elements necessary to constitute an obligation:

First. The *juris vinculum*, by which an obligor can be sued in a court of justice, and compelled by the public force to comply with his obligation.

Second. It must exist before one or more determinate persons on the one side, and one or more determinate persons on the other side. It is essentially individual and relative, and must not be confounded with general duty to society.

It is true there is a general obligation not to assail a man's person or property; but this is an obligation common to all persons, and is of a negative, not of a positive, character, and does not bind one determinate person to another determinate person. On the contrary, it is obligatory upon all persons towards one another. It is called social duty, and is only the respect due to real rights.

1. Quasi-contracts are the lawful and purely voluntary acts of a man, from which there results any obligation whatever to a third person, and sometimes a reciprocal obligation between the parties.

This class of obligation arises from *lawful acts*, and not from agreements. Illustrations of quasi-contracts are the obligations arising when a man, of his own accord, undertakes the management of the affairs of another, under circumstances from which no agency can be inferred. His obligations as *negotiorum gestor* are those of a quasi-contract; the obligation to restore money paid or received in error is a quasi-contract; all the equitable doctrine that no man shall enrich himself at the expense of another comes under this head. An heir benefited by a third person's payment of his ancestor's debts, although payment is not made at the request of the heir or ancestor, is bound by a quasi-contract to reimburse the amount so paid. Hence it is perceived the quasi-contract is not the implied contract of the common law, which presupposes the request of the party who receives the benefit. The obligation of the quasi-contract results from benefit actually received from a lawful act done without request.

2. An offense is an illegal act done, with intent to injure.

3. A quasi-offense is an unlawful act done unintentionally, the result of negligence or imprudence.

The injury resulting from an offense or quasi-offense gives rise to an obligation to repair it. The code sententiously

declares that "every act whatever of man that causes damage to another obliges him by whose fault it happened to repair it."

4. Illustrations of obligations resulting from the operation of the law are the obligation to pay taxes, and in Louisiana the obligation to allow your neighbor, in cities, to rest nine inches of his wall on your land.

It is considered by civilians, that the classification I have mentioned embraces every conceivable condition of fact giving rise to civil obligations.

I pretermitt also the doctrine of privileges, a privilege being a right which the nature of the debt gives to the creditor, and which entitles him to be preferred to other creditors, even those who have mortgages. It is conferred by law, and cannot be created by contract.

The privilege is either general—that is to say, it affects all the property of the debtor, or all his movables—or is special—that is to say, is applicable to a particular object, as in the case of the vendor, who has a privilege on the thing sold for the unpaid price.

While a privilege may affect movables, a mortgage cannot: for movables are not susceptible of mortgage.

The general privileges on all the property of the debtor are funeral charges, judicial charges, expenses of the last illness, wages of servants, and salaries of clerks for the year past, and so much as is due for the current year.

The dotal, but not the paraphernal, rights of the wife are secured by a general privilege on all the movables of the husband.

A debt for supplies of provisions to the debtor or his family during the last six months by retail dealers is entitled to a similar privilege. In addition to the privilege given to the vendor for the unpaid price of the object sold, the law implies in the contract of sale, and in every commutative or

synallagmatic contract, a resolatory condition, which gives either party the right to sue for a revocation of the contract in case the other fails to comply with his engagements. Both the privilege of the vendor and the resolatory condition were unknown to the Roman law; for after delivery, that law abandoned the vendor selling on credit to the good faith of the purchaser, and refused a resolution of the sale for non-payment of the price, unless the *pactum commissorium* had been expressly stipulated.

The privilege of the vendor and the resolatory condition are the conception of the modern civilians, who say that both rights are visceral to the contract of sale (*adhærent visceribus rei*), and therefore exist, unless renounced in terms not to be mistaken.

In conclusion, I must barely allude to the third mode of acquisition—the operation of the law.

Under this head is embraced acquisition by accession, occupancy, prescription, and the perception of fruits by a *bona fide* possessor. The Code of 1808 admitted seven modes of acquisition. The existing code has included in one class, “the operation of the law,” all other modes than succession and the effect of obligations.

The right of accession is the right of the owner of a thing to all that it produces, or becomes united to or incorporated with it, either naturally or artificially; as, for instance, fruits, accretions, or the union of two things by adjunction, as a picture to a frame; or by specification, as where a block of marble has been converted into an Apollo by a sculptor; or by commixtion or confusion, as in the case of the mixture of wines belonging to different proprietors.

Acquisition by occupancy requires no comment, nor does that by prescription. I should remark, however, that there are two kinds of prescription: one termed liberative, which discharges a person from debt; the other called acquisitive,

because thereby property is acquired. The liberative prescription differs from the common law Statute of Limitations in this, that it is extinctive in its character, and therefore is defined in the code as one of the modes of extinguishing obligations. Hence it is not the debtor alone who can plead prescription, as is the case at common law, but creditors, and all other persons who may have an interest in acquiring an estate or extinguishing an obligation may plead it, even though the debtor should refuse to make the plea or renounce it.

The perception of fruits by a *bona fide* possessor is a mode of acquisition, because, although he is not owner, yet, believing himself to be so, the law gives him the fruits of the thing in his possession, while he is ignorant of the defects of his title.

REPORT
OF THE
COMMITTEE ON JURISPRUDENCE AND LAW REFORM.

TO THE PRESIDENT OF THE AMERICAN BAR ASSOCIATION:—The Committee on Jurisprudence and Law Reform respectfully report as follows, in reference to the several subjects confided to them by the Association:

I.—THE FORM OF ACKNOWLEDGEMENTS OF DEEDS AND OTHER INSTRUMENTS AFFECTING REAL ESTATE, AND THE MODE OF EXECUTING AND ATTESTING WILLS.

At the first Annual Meeting of the Association, held August, 1878, this committee was instructed to inquire into and report upon the present condition of the law touching the acknowledgment of instruments relating to real estate, with such suggestions as they might deem expedient, looking to greater uniformity in the forms of acknowledgment and the certification thereof, and also to make like inquiry and report in reference to the laws of the several states relating to the execution of wills.

The committee reported at length on the above subjects at the Annual Meeting held in August, 1879, and a resolution recommended by the committee was adopted by the Association, declaring its judgment in favor of the desirability of securing, by legislation in the several states, uniformity in the acknowledgment and authentication of instruments relating to real estate, and in the mode of exe-

cuting and attesting wills. The subject was again referred to this committee, with a direction to the Local Councils to co-operate with it in the preparation of forms of acknowledgment and of regulations as to the execution and attestation of wills, with a view to securing such uniformity, such forms to be reported to the Association.

Progress was reported by the committee at the meetings of the Association held in 1880 and 1881. After a full consideration of the subject, the committee determined to submit to the Local Councils a form for the acknowledgment of deeds and instruments affecting real estate, embodied in the draft of an act to be submitted to the several legislatures of the states. (The proposed act is Schedule A, following the resolution (No. 1) annexed to this report, *post* p. 303.)

In the judgment of the committee, it was inexpedient to attempt anything in the way of legislation as to acknowledgments beyond the simple and single act herewith submitted; and the replies received from the Local Councils, so far as they have reported to the committee, confirm this opinion. Some of the members of the Local Councils have given valuable suggestions looking towards a more complete uniformity as respects all the incidents of transfers of real estate, but legislation upon a subject as to which so great a diversity of views exists, must necessarily be wisely matured and cautiously adopted, and the proposed act is a single step towards a desirable simplification and uniformity in the whole system of transfers of real estate.

The following explanatory remarks are submitted in connection with the act:

1. The act, as to form of acknowledgments, is for obvious reasons *permissive* and not *mandatory*.
2. The direction as to *caption* is given instead of a form of caption, for the reason that in some states instruments are recorded by county officers, and in others by town officers;

and while it is advisable that every acknowledgment should name the state within which it is taken, it is unnecessary to name in addition any other place than that division of the state within which it is executed, having reference to the recording system in force in the state.

3. The form requires the officer taking the acknowledgment to certify to the personal appearance before him of the person executing the instrument and making the acknowledgment, and to the identity of the person described, and who executed the instrument, with the person making the acknowledgment; and includes in the acknowledgment the declaration by the person making it, that it was his free act and deed. These would seem to be the essential and sufficient elements of the certificate.

4. The provision in respect to married women conforms to the existing law in many of the states, and to the statute of New York, passed May 5, 1879, Laws 1879, p. 327.

5. The form as to corporations and joint stock associations will apply equally to cases where the instrument is signed by two officers of the corporation and acknowledged by only one of them, as where it is signed by one alone.

The responses received by the committee to a circular addressed to the Local Councils were, with few exceptions, in favor of the proposed act. Some suggestions were made in view of local statutes, usages, and decisions, or of constitutional provisions existing in some of the states, which may make slight modifications in the forms advisable in those states; but the committee is prepared to recommend the adoption by the Association of the resolution herewith presented, sanctioning the proposed forms. (See resolution (No. 1), *post* p. 303.)

In reference to wills, the committee were of opinion that it was best to confine the effort to be made at present in the direction of greater freedom in their execution, to a recom-

mentation looking to the permission by the legislatures of the several states, of the making of olographic wills as they are now sanctioned in some of the states. Accordingly, a draft act was prepared and submitted to the Local Councils, as follows:

An Act relating to Wills.

Any instrument purporting to be a will, wholly written, signed, and dated by the testator, shall be as valid and effectual, to all intents and purposes, as if the same were executed and attested as a will, in the manner now required by law.

The following note was appended:

5. Olographic wills are in some states admitted to probate without further authentication, and it would seem advisable that the permissive provisions of the proposed act should be generally adopted.

The last mentioned act did not receive the concurrence of the Local Councils to an extent sufficient to warrant the committee in asking the Association to take any action in reference to it, nor is the committee prepared to recommend at present any effort to secure uniformity of legislation as to the mode of executing and attesting wills. It will probably be wiser to limit the recommendation of the Association to the matter of acknowledgments, than to attempt to promote changes in respect both to deeds and wills. But the committee renews the suggestion made in its report of August, 1879, in favor of the general adoption of an act substantially embodying the provisions of the present Statute of Wills in England, relating to the execution of wills, the text of which is as follows:

"And be it further enacted, That no will shall be valid unless it shall be in writing, and executed in manner hereinafter mentioned; that is to say, it shall be signed at the foot or end thereof by the testator, or by some other person in his

presence, and by his direction; and such signature shall be made or acknowledged by the testator in the presence of two or more witnesses present at the same time; and such witnesses shall attest and shall subscribe the will in the presence of the testator, but no form of attestation shall be necessary." (And see the Wills Act Amendment of 1852, as to what shall be deemed signing "at the foot or end" of the will.

II. LAWS OF MARRIAGE AND DIVORCE.

At the meeting of the Association held in 1879, the Committee on Jurisprudence were requested to prepare and report a synopsis of the laws of marriage and divorce in all the states and territories and the District of Columbia, with such recommendations as they might deem expedient for bringing about more uniformity in such legislation.

In obedience to this instruction, your committee have gathered a large mass of information relating to this subject, and are in possession of the materials necessary for the preparation of such a synopsis. The publication of such a document, however, covering probably not less than a hundred pages of our transactions, would seem to us quite an unnecessary expense, as the greater part of what it would contain is already in print and readily accessible in a convenient form. A principal branch of the subject, an analysis of the various statutory enactments and adjudications of the different states, relating to divorce and alimony, is fully treated of in a volume contributed to the jurisprudence of this country by Mr. William H. Browne, a member of the Philadelphia Bar, and published in 1872. Some interesting statements on the general topic of the law of marriage and divorce as now existing in this country may also be found in Mr. Benjamin Vaughan Abbott's new work, entitled *Judge and Jury*, published in 1880 by Messrs. Harper & Bros., and in Dr. Wharton's *Private International Law*, second edition, chapter iv.

It is the judgment of the committee, after full consideration of the subject, that it is inexpedient for the Association to take action at present in reference to the regulation of marriage and divorce, except in the particular manner hereinafter suggested.

The peculiar confusion and embarrassment attending the practical operation of the marriage and divorce laws of the several states as respects each other, is matter of general cognizance by the profession.

The variations in the statutes relating to the inception of the marriage relation, the parties between whom it is permitted, and the authentication of the act by which it is formed, are numerous; and in states where any specified prerequisites or formalities are prescribed, the compliance with these must necessarily be established by well defined methods; while where (as in New York) marriage depends solely upon contract between the parties, it may be proved, like any other contract, by any competent testimony.

It has been the policy of our people to encourage marriages, and therefore to abandon many of the preliminary restrictions which are generally regarded as necessary in older countries. But slight inconvenience has thus far been found to result from the simplicity of our procedure, or from the differences existing in this respect between the laws of our different states. Marriage is everywhere recognized as not only a contract, but a social institution, and however constituted or celebrated, the nature and consequences of the union are the same, so long as it endures.

The continuance of the marriage relation, however, in any given case, must depend largely on the causes recognized by the state as adequate to justify its dissolution; and here your committee do not venture to hope that any absolute uniformity of legislation can be attained in a country composed in this regard of so many different sovereignties,

representing so many various conditions of social life and progress.

We find that the number of causes of divorce rises to sixteen in New Hampshire and falls to two in Delaware.

Among some of the causes which, though not found in the statutes of most of our states, are deemed sufficient in one or more of them, we may mention the following as specified by Mr. Browne :

Colorado.—Willful absence from the state without the intention of returning.

Dakota.—When, from threatening words, the weaker party feels in danger of bodily injury.

Florida.—Habitual indulgence of violent and ungovernable temper.

Indiana, Maine, and North Carolina.—Any cause which the court, in its discretion, may deem sufficient.

Indiana.—Failure of husband to support his family.

Missouri.—Vagrancy of the husband.

Pennsylvania.—Cruel and barbarous treatment on the part of the wife, rendering the husband's condition intolerable or life burdensome. Personal abuse, or such conduct on either side as renders the other party's condition intolerable and life burdensome.

Wisconsin.—A voluntary separation for five years.

But the practical difficulty which confronts the profession and the judiciary, and which attracts the public attention to this subject, with a vague and constantly recurring sense of the existence of an evil for which reform and remedy are needed, grows not so much out of the greater facilities for procuring divorces which certain of the states accord to their inhabitants, as out of the frequency by which those facilities are availed of by citizens of other and perhaps distant states, in which the barriers to divorce are found sources of inconvenience.

It is understood to be the settled law that a judgment of divorce obtained in any state of the Federal Union, in the absence of fraud, between parties actually resident in such state for the time required by law, and over whom the court had jurisdiction, is valid and binding in any other state when properly authenticated, however repugnant to the laws of the latter state may have been the grounds upon which the judgment proceeded. But this is only a necessary consequence of the separate sovereignty of each state, and of the controlling obligation of the Federal Constitution, by which a judgment in one state is effectual in every other state. Each state being supreme in respect to the powers not delegated to the United States, nothing can secure similarity of legislation on the subject of marriage and divorce, except identity of views in the several state legislatures, or an amendment of the Constitution, by which Congress shall be empowered to establish a uniform system throughout the United States. Such an amendment would be quite repugnant to the whole structure of our American system, and without it no action by Congress can be practicable, except so far as the District of Columbia and the territories are concerned.

The subject being thus one of state cognizance, it can hardly be expected that any radical change in the laws of the several states, either as to the mode of entering into the marriage relation or as to the grounds of dissolving it, could be effected so as to secure uniformity of statutory provisions throughout the Union upon any basis which this Association could suggest. Every state has its own system, and upon a question of this nature would not easily be brought to adopt new methods at the instance of any voluntary association. Nor can it reasonably be expected that identity of views should prevail upon this subject in different communities. Differences in the statutory provisions of the states

already exist which can hardly be accounted for. In New York, where marriage rests only upon contract so far as statute law is concerned, the ease with which the relation of husband and wife may be formed is counterbalanced by the difficulty of dissolving it, no ground of absolute divorce being admitted for any cause existing after marriage save the extreme violation of conjugal duty; while in Connecticut, where the statute prescribes special formalities of registration and license as prerequisites for a valid marriage, the grounds for its absolute dissolution are numerous, and include "habitual intemperance" and "intolerable cruelty," vices often found to be of rapid growth when they can be so cultivated as to ripen into a divorce *a vinculo*.

It can hardly be asserted—or, if asserted, hardly established by proof—that the standard of conjugal fidelity in any state is measured by the amount of formality required by the local law in contracting a marriage, or the difficulties placed by the statute in the way of dissolving it. So long as any state deems it most conducive to domestic tranquillity and the general welfare within its own bounds to permit the largest liberty of divorce, it will furnish the means for all parties who wish to avail of its statutes, and can attach to themselves its jurisdiction.

The deep-rooted objections of a large portion of the English people to marriage with a deceased wife's sister seem to the bulk of Americans as absurd as the old-fashioned prejudices against usury appear to the stockjobbers of Wall street. But the almost annual debate in the British Parliament shows that the law prohibiting such marriages is not easily to be disturbed; and an eminent jurist in the House of Lords, a couple of years ago, actually declared its maintenance essential for the protection of sisters-in-law during the pendency of the first marriage; an argument which seems hardly to have been refuted by the declaration of

another distinguished leader in the same body, that he had several sisters-in-law, but did not wish to marry any one of them. This recent instance of the diversity of views in the most conspicuous of legislative bodies, on a single question affecting the marriage relation, aptly illustrates the practical difficulty of attempting to reconcile the inevitable conflict of opinion which must stand in the way of an effort to secure uniformity on the general subject.

In view of these facts, it seems foreign to the main purposes of this Association to attempt any scheme looking to uniformity of legislation in respect to the forms of marriage or grounds of divorce. It is to be assumed that whatever efforts it could properly put forth would be in aid of the greater permanence and stability of the marriage relation, which is the underlying basis of civilized society, of which the members of the legal profession—at the bar, on the bench, or in the halls of legislation—are, more than all other men, the sworn and qualified guardians. But to each separate sovereignty in our Union of states, and to the public sentiment and opinion of its own communities, must necessarily be left the responsibility of regulating the marriage relation as to its own citizens, so far as it falls within the province of human legislation.

No state, however, can wish to interfere with this relation as respects the citizens of a sister state. Is it not possible, without seeking to alter the domestic jurisprudence or Constitution of any state, to gain the general consent of all to confine their jurisdiction over proceedings of divorce, as regards non-residents, within more definite if not more narrow limits?

It seems to your committee that unless one party at least can show a domicile, as distinguished from a mere residence, jurisdiction ought to be declined.

It is the general doctrine of international law that a divorce granted to one who claims only to be a resident in

the territory where it is sought, and not a domiciled citizen, is of no extra territorial force. No judicial decree is more to be deprecated than one which assumes to divorce a married couple, and does so within the limits of a particular state, or even of the United States, but leaves them married still in every foreign country in which either may chance to be found.

Take, for instance, the present statute of Kansas, under which it is sufficient if the plaintiff in a divorce suit is at the time a resident in the county, and has had a residence in the state for the year preceding. An Englishman residing there, brought a petition of divorce on the ground of desertion, of which his wife received no actual notice, and the divorce was granted. He then married again, and his wife applied in England for a divorce on the ground of adultery in consequence of the second marriage, and obtained it, the court disregarding the Kansas divorce, as granted without jurisdiction, for want of a domicile in Kansas on the part of either party, and treating the case as one of bigamy, coupled with adultery. (*Briggs vs. Briggs*, L. R. 5, Prob. and Div. 163, 1880.)

In Mr. David Dudley Field's *Project of an International Code*,* this subject is examined with care, and the suggestion made that no divorce be accepted as internationally valid, unless one or the other of the following conditions of jurisdiction exist:

1. When both parties have their domicile within the jurisdiction at the time of the institution of the suit.
2. When one of them is domiciled there, and the other is found there at the time when the suit is instituted, and is personally served with process.
3. When the marriage was celebrated in the country where the suit is brought, or by its functionaries, provided the

* Articles 674-677.

plaintiff is domiciled there when he sues, and the defendant is notified in the form prescribed by competent authority according to its law.

4. If there is jurisdiction in favor of the plaintiff under the foregoing rules, then the court may entertain a cross-action for divorce in favor of the defendant.

It is unquestionable that the instances of divorce which have brought most reproach on American institutions, are those in which residence has been accepted as equivalent to domicile, and acquired or pretended for the mere purpose of conferring jurisdiction.

In a recent issue of a New York journal, the following advertisements, and these only, appear under the head of

LEGAL NOTICES.

"Absolute divorces, speedily, without publicity; consultations free. ———, Lawyer, 6 ——— place. No advance fees."

"Absolute divorces, without publicity, in thirty days; incompatibility; every cause; all courts; no money required until granted.

—————, ——— Broadway."

"Divorces quickly, without publicity; every known cause; consultation strictly private and free; always successful.

"Counselor ———, ——— Broadway."

"Divorces obtained; all causes; collections made; law business transacted; all states; advice free. ———, ——— Broadway."

"Divorces cheaply, without publicity; desertions, incompatibility, non-support, intemperance, compulsory marriages; parties any state; explanatory blanks free; always successful; consultations free; confidential.

"Counselor ———, ——— Broadway."

As a further instance of the methods pursued in these central bureaus of divorce, we subjoin in an Appendix to this report, omitting only the name and address, a printed

form of letter and circular sent out last year by one of them to practitioners in other states.

We call special attention to the statement—doubtless but too true—in this nefarious circular, that the attorneys who sign it, “are constantly procuring divorces for persons in all parts of the Union who could not or did not wish to bring suits in *their own courts*,” as well as to their assurance that “a divorce once granted by any legally constituted court of record, having jurisdiction in such causes, and according to the provisions of the law where such court is situate, cannot be revoked or annulled by any court of another state within the United States, no matter upon what grounds or *pretexts* it may be obtained, provided the statutory provisions of that state or territory are satisfied.”

It is safe to say that any concert of legislation by which domicil, fortified, if necessary, by a certain length of residence, should be required on the part of at least one party to every divorce suit, would destroy much of the business of such so-called counselors, and put a stop to many of the frauds which are now but too successful.

Your committee desire to call attention to a method of preventing fraudulent or collusive divorces which has been introduced of late years into the English practice. Under their Matrimonial Causes Act of 1860, every decree for divorce is at first *nisi*, not to become absolute until at least three months, during which period any person may be allowed to intervene, and show collusion or material facts not brought out at the hearing, for the purpose of setting it aside. An officer, styled the Queen’s Proctor, is also authorized to intervene if he suspect collusion, either before or after the hearing.*

Should similar legislation be had in this country—to the

* See a discussion of the practice under this act in Browne on the *Law and Practice of Divorce*; London, 1880, p. 314.

extent, at least, of giving to the public prosecuting officer the power of not imposing on him the duty of intervention—the impositions sometimes practised upon our courts could hardly fail to become less frequent.

In the administration, indeed, of the statute law upon this as on other subjects for which the bar is especially responsible, is a field in which, it may be, the Association can render some service to the cause of justice.

The flagrant abuse of the process of the courts and of judicial proceedings by unscrupulous and unworthy practitioners in a certain class of divorce proceedings, are a scandal to our profession and a reproach to our civilization. Every lawyer has an undoubted right to pursue, in behalf of his client, whatever remedy the law of the land provides in the particular case in which he is called upon to act; but inasmuch as the severance of the marriage relation is, under all systems of civilized society, an exceptional act of the sovereign power, permitted only in certain prescribed emergencies, the aiding and abetting in its dissolution, except within the limits of the law, is a crime against society which, when committed and detected, should be punished at once and with the utmost severity. The service on an unsuspecting married woman of a summons in a suit for an absolute divorce, concealed in a bouquet of flowers, presented to her on the deck of a steamer in which she was about to depart for a voyage, during which the time to answer would expire; the tacking to a fictitious decree of divorce, genuine certificates of exemplification detached from a real decree; the procurement of judgment by default, after publication in obscure newspapers; false personations for the purpose of inducing misleading testimony; and the connivance at apparent or actual crime for the perversion of the due processes of the law, are all of a piece with the bolder rascality by which, in our greatest commercial community, collecting lawyers have been known to commence

proceedings for the collection of a doubtful debt by an execution, levied on a stock of goods by a supposititious deputy sheriff, aided by a real horse and cart.

The honest sentiment of the profession and of our people is so well established on this subject, that there is no need to enlarge upon it; and in the judgment of the committee, not the least service which the Association can properly render to the public in respect to the laws of marriage and divorce is to urge upon its Local Councils, and through them upon the bar and judiciary of the several states, the importance of such regulations of practice in divorce suits as shall prevent the misuse of the process of the courts, secure full and fair notice to all parties of every proceeding, and visit upon every attorney guilty of wrong practices in such proceedings, the severest penalties which can be imposed.

Your committee also believe that greater uniformity of legislation as to the conditions of divorce jurisdiction is both desirable and attainable, and that on the whole the suggestions of the draft code of international law above referred to are the most worthy of adoption, though they are not prepared to advise the Association to attempt more at present than to urge upon the attention of the several states the cardinal principle that domicile, as well as residence, should be required in the case of at least one of the parties.

They therefore recommend to the Association the adoption of the resolutions relating to this subject annexed to this report. (See resolutions (No. II.), *post* p. 304.)

III.—COMMISSIONS OF LEGISLATION.

At the last meeting of the Association, this committee was by resolution requested "to inquire into and report, at the next session of the Association, upon the expediency of establishing, in connection with the legislative departments of the state governments, a 'Commission of Legislation'—

a committee or legal board whose duty it shall be from time to time to prepare such bills for the legislature as the progress of events or the consolidation of existing statutes may require, and to which shall be referred public bills which may be pending, that they may receive proper form, be made to harmonize in their several parts, and be put in such terms as to accomplish the object of their enactment." And further, "that if the committee should deem such a commission or board practicable, they be requested in their report to indicate the best mode of constituting and establishing the same."

That this resolution looks to providing a remedy for a very serious evil will hardly be questioned. It is notorious that the habits of care, deliberation, and precision in thought and in expression which should be brought to the work of preparing the statutes of our commonwealths, as well as the special knowledge and experience required for the due performance of the work, are not as a general rule possessed by our legislators. It is no disparagement, even to the ablest of them, to assert that the skill and aptitude required for the preparation of statutes intended to provide new rules and remedies of general application, to supply the omissions or cure the defects of former laws, and to prescribe methods of procedure for the courts and for the whole organized government of the state, do not necessarily belong to those elements of usefulness which may combine to make a man a good representative of the people in the legislature. The need of greater care and system in the discharge of this branch of the legislative function has already asserted itself in England, and to a certain extent in the United States, and may justly be classed among the reforms in practical administration which an enlightened public opinion imperatively demands.

The labor of this committee, in discharging the duty devolved upon it by the Association, in reference to this im-

portant subject, has been greatly lightened by the fact that since our last meeting it has been made the theme of the annual address delivered by the President of the Social Science Association, Professor Francis Wayland, of Yale College, and since published under the title *The Defects of our Method of Making Laws*. This address is so forcible and exhaustive in its presentation of the subject, that no apology can be needed for referring to it as covering the ground of the inquiry we have been directed to make, or for availing of the valuable information which it contains. The committee beg to commend the views and suggestions of Professor Wayland to the special attention of those members of the Association who are not already familiar with them.

After adverting to the want of qualifications on the part of most of the members elected to our legislatures for the task of preparing bills, Professor Wayland remarks that "in most of our legislatures the supervision of the form of general laws devolves upon the Judiciary Committee, which usually contains a fair representation of the legal talent of the body. But these committees work very irregularly. During the early part of the session they are necessarily unoccupied. Bills and petitions are being presented and referred, but action upon them is postponed until a considerable number has accumulated. Indeed, it is not unusual to defer action until the time has expired in which new matter may be brought forward.

The facilities of travel, the thoughtful liberality of railroad corporations, the demands of private business, and the temptations of home combine to reduce the actual legislative days to three, or at most four in each week. Committee work is supposed to consume the hours not spent in general session. This is the theoretical view; but in point of fact, the time devoted to the consideration of public matters is pitifully short, when measured by the magnitude of the interests in-

volved. In one of our leading states, not more than one hundred hours was given to three hundred bills; in another, about one hundred and twenty hours to more than two hundred and twenty bills. By and by it begins to be realized that the day agreed upon for adjournment is near at hand. Members grow impatient of delay, and the Judiciary Committee finds its work half completed. The tables are covered with matters that demand close attention. There are bills to be framed based upon petitions; imperfect bills for which substitutes must be drawn; bills requiring material amendments; doubtful bills, and bills which it is feared must be continued. How, under these circumstances, the work is done and the tables cleared is not generally reported, but is generally understood; and the courts set to work anew to disclose, if possible, what the legislature meant.

Numerous illustrations of this crude, improvident legislation, given in the address from which the above citation is made, and which could be gathered from the public press and from the experience of our profession, might be adduced; but it is unnecessary to occupy time with such illustrations. If there is any department of the administration of the government of a free people which should be intrusted to competent and skilled hands, it is that which concerns itself in the making of the laws by which the people are to be governed.

The resolution under consideration proposes that the Commission of Legislation shall not only supervise the form of the acts to be passed, but shall itself originate or suggest the legislation which the progress of events may require. It seems hardly necessary to add to the number of those already engaged in promoting legislation. The Annual Reports of the President of this Association show how prolific of statutes our legislatures now are; and unless their powers could be restricted to enacting only such laws as a commission should

recommend, there is danger that the commission itself would sink under the load thus annually imposed upon it. As a matter of fact, there is seldom any difficulty in securing the presentation of a bill to the legislature. The difficulty lies in having it presented in proper form, and so passed as to be in all respects a proper addition to the existing statute law. And it cannot be doubted that the public interests would be greatly subserved by providing skilled and responsible supervision of the work which is now done by irresponsible or incompetent persons, or is not done at all.

In England this duty is confided to an officer who bears the title of Parliamentary Counsel, assisted by the requisite staff, which is increased or diminished as the occasion may require. He receives his instructions for the preparation of bills from the ministers of the government for the time being; for under the English parliamentary system the greater part of the bills which become acts originate with the ministry. In one, at least, of the states of the Union a somewhat similar duty is attached to the office of Attorney General. Any member of the legislature may address a request to the Attorney General asking that a bill be prepared for a given purpose; and it is made the duty of this officer, who during the session of the legislature is allowed to employ the needed assistants, to prepare a suitable draft.

This plan, if generally adopted, would lessen the labor of the Judiciary and other committees, whose attention could then be directed to the substance rather than the form of bills; and it would insure that bills, if reported favorably, had passed under the supervision of a responsible draughtsman, and after proper investigation of existing statutes affecting the subject. It would not seem difficult to introduce this system in each of our states. It would require the creation of no unfamiliar office, nor would it clothe the Attorney General with powers that could be improperly exerted; for

while it would doubtless be his duty to call attention to any proposed unconstitutional legislation, his services in the preparation of bills would be purely ministerial. The machinery thus provided would be inexpensive and easily adapted to our American methods; and if found useless or unsatisfactory, could as easily be abandoned.

An act authorizing the Attorney General to employ, or the legislature to appoint, one or more skilled assistants if necessary, during the session of the legislature, and to prepare and revise such bills as might be required of him, would provoke little opposition, and we think might be safely urged by the Local Councils of this Association upon the legislatures of their several states.

The committee recommends the adoption by the Association of the following resolution. (See resolution (No. III.), p. 305.)

All which is respectfully submitted.

WM. ALLEN BUTLER, *Chairman*.
SIMEON E. BALDWIN,
HENRY HITCHCOCK,
SKIPWITH WILMER.

RESOLUTIONS.

I.—FORM OF ACKNOWLEDGMENTS.

Resolved, That this Association recommends the passage by the legislatures of the several states and territories of the act relating to acknowledgments of instruments affecting real estate in the form reported by the Committee on Jurisprudence and Law Reform, a copy of which is hereto annexed, and marked Schedule A; and that under the direction of said committee the several Local Councils be and they are hereby requested to further, by all proper means, the passage of such act by their state legislatures.

SCHEDULE A,

REFERRED TO IN THE FOREGOING RESOLUTION.

An Act Relating to Acknowledgments of Instruments Affecting Real Estate.

SECTION 1. — The following forms of acknowledgment may be used in the case of conveyances or other written instruments affecting real estate; and any acknowledgment so taken and certified shall be sufficient to satisfy all requirements of law relating to the execution or recording of such instruments:

(Begin in all cases by a caption specifying the state and place where the acknowledgment is taken.)

1. In the case of natural persons acting in their own right:

On this day of , 18 , before me personally appeared A B (or A B and C D), to me known to be the person (or persons) described in and who executed the foregoing instrument, and acknowledged that he (or they) executed the same as his (or their) free act and deed.

2. In the case of natural persons acting by attorney :

On this day of , 18 , before me personally appeared A B, to me known to be the person who executed the foregoing instrument in behalf of C D, and acknowledged that he executed the same, as the free act and deed of said C D.

3. In the case of corporations or joint stock associations :

On this day of , 18 , before me appeared A B, to me personally known, who, being by me duly sworn (*or affirmed*), did say that he is the president (*or other officer or agent of the corporation or association*) of (*describing the corporation or association*), and that the seal affixed to said instrument is the corporate seal of said corporation (*or association*), and that said instrument was signed and sealed in behalf of said corporation (*or association*) by authority of its Board of Directors (*or trustees*), and said A B acknowledged said instrument to be the free act and deed of said corporation (*or association*).

(In case the corporation or association has no corporate seal, omit the words "the seal affixed to said instrument is the corporate seal of said corporation (or association) and that" and add, at the end of the affidavit clause, the words, "and that said corporation (or association) has no corporate seal.")

(In all cases add signature and title of the officer taking the acknowledgment.)

SEC. 2. When a married woman unites with her husband in the execution of any such instrument, and acknowledges the same in one of the forms above sanctioned, she shall be described in the acknowledgment as his wife, but in all other respects her acknowledgment shall be taken and certified as if she were sole; and no separate examination of a married woman in respect to the execution of any release of dower, or other instrument affecting real estate, shall be required.

II.—MARRIAGE AND DIVORCE.

Resolved, That in view of the frequent occurrence of cases of irregular and fraudulent practices in the conduct of suits for divorce, involving abuse of the process of the courts,

breach of professional obligations, and connivance at actual crime, the Local Councils of the Association, and the several state and local Bar Associations, be respectfully requested, as far as possible, to expose such irregularities and frauds, and to secure the punishment of all parties concerned in them.

Resolved, That the several Local Councils and state and local Bar Associations be requested to advocate the enactment in their respective states of a statute of which the following is a draft:

An Act to Prevent Fraudulent Divorces.

The jurisdiction of the courts of this state, in suits for divorce, shall be confined to the following classes of cases:

1. Where both parties were domiciled within this state when the action was commenced.

2. Where the plaintiff was domiciled within this state when the action was commenced, and the defendant was personally served with process within this state.

3. Where one of the parties was domiciled within this state when the action was commenced, and one or the other of them actually resided within this state for one year next preceding the commencement of the action.

III.—COMMISSIONS OF LEGISLATION.

Resolved, That in view of the growing evil of hasty and ill-considered legislation and of defective phraseology in the statute law, this Association recommends the adoption by the several states of a permanent system by which the important duty of revising and maturing the acts introduced into the legislatures shall be entrusted to competent officers, either by the creation of special commissions or committees of revision, or by devolving the duty upon the Attorney General of the state.

APPENDIX.

(See note, p. 294.)

New York, April 26, 1881.

DEAR SIR:—We enclose to you one of our circulars on divorces. Shall be pleased to tender you our services in a legal way. We have, and are even now obtaining divorces for attorneys in all parts of the country. Our rates to the profession for an ordinary case is only \$40—to others they vary from \$50 to \$250. In all cases \$10.50 must be paid when the suit is entered, for court fees—the remainder when the decree is granted. Shall be pleased to hear from you at any time. We are very truly yours,

B—— & B——,
Main Office, No. ——— street.

The following is a copy of the circular:

B—— & B——,
Attorneys-at-Law,
No. ——— st., and No. ——— st.,
New York City.
Office hours from 10 to 3.

Having made divorce suits a specialty, we are familiar with all the laws relating to them in the District of Columbia and different States and Territories. Our suits are brought under laws best adapted to the case. They differ so much that persons wanting divorce should not be influenced by the opinions of attorneys or even judges, in ordinary practice, because they may have been unable to obtain a divorce under the laws of their own State.

We are constantly procuring divorces for persons in *all parts of the Union* who could not or did not wish to bring suits in their own courts, and that we do so legally and successfully is evidenced by the fact that we guarantee to refund all money paid in any case where decree is not obtained.

Your personal appearance at court is unnecessary, and as we represent you as attorney, and proof made by your own or other affidavits, no unpleasant notoriety or public exposure of charges need attend the suit.

We prefer personal interview with clients, as we can much better explain matters than by correspondence, but can in nearly all cases prepare the necessary papers without, and send to you to sign and return to us—no fee charged for consultation in person or by letter. Applicants can marry again in any State or Territory, as the decree places their relations to each other as they were before marriage. When property, etc., is involved special correspondence is solicited.

We guarantee to procure a full and absolute divorce with custody of children, if desired, under the latest laws, in about sixty days from beginning of suit, by legal proceedings in a duly qualified Court of Record, for *Incompatibility of Temper*, or where parties cannot live in peace and union together, *Adultery, Desertion, Bigamy, Cruelty, Impotency, Refusing to provide for Family or neglect of Home Duties and children, Conviction of Felony, Fraud in Consummating the Marriage Contract, and Marriage under age.*

The cost, including all court fees and costs, will be \$——. If you wish us to prosecute your case, fill up the enclosed blank carefully and return to us with \$——, which amount is for actual and immediate court fees, which must always be paid in advance. Then we will prepare your petition and send to you for your signature. The balance to be paid upon delivery of decree of Divorce.

Send check or postal money order to

Yours, most respectfully

B——— & B———,

Attorneys-at-law.

General Decisions by the United States Supreme Court and other State Courts.

The laws of divorce differ essentially from those relating to property and personal rights, and it has been repeatedly decided by the United States Supreme Court and the various State courts, that a divorce once granted by any legally constituted court of record having jurisdiction in such causes, and according to the provisions of the law where such court is situated, cannot be revoked or annulled by any court of another State within the United States, no matter upon what grounds or pretexts it may be obtained, provided the statutory provisions of that State or Territory are satisfied.

Decisions of the United States Supreme Court.

Both parties to a cause for divorce and alimony which has been given by any of our State courts, are bound by the decree. The decree is a judgment of and will be received as such by any other court, and such

judgment or decree, rendered in any court within the United States, will be carried into judgment in any other State, and have the same binding force as it had in the State in which it was originally given.

If the decree had become a matter of record in the court granting it, it is binding on all the other States and courts in the Union. It is not in the power of any State Legislature, or of courts by judicial decision proceeding under a statute or not, to reject the record, or give to it an effect less than it has in the State or court where made, and any State law to the contrary is simply unconstitutional. If it dissolves the marriage, all other courts will be compelled to hold such person afterwards to be unmarried.

A decree of divorce dissolving a marriage is legal throughout all the world.

A decree of divorce once granted cannot be set aside or annulled for any cause, even if the courts granting the divorce was not fully advised of all the facts in the case.

A decree in cases of divorce and alimony is not subject to judicial revision.

Courts cannot interfere in a divorce granted in another State.

Even a review of a judgment of divorce cannot be had in Indiana.

Fill this circular carefully, and enclose to us money order for \$—— and a full and explicit statement of your case.

B——— & B———, Attorneys,

No. — — — st., New York.

Your name in full.

P. O. address.

Where married?

When married?

Name of Partner.

His or her Address.

By whom married?

Did you leave him or her?

How long since?

Issue, how many?

Male, age and name.

Female, age and name.

Who wishes possession?

Any real property involved?

Cause of application for divorce.

REPORT
OF THE
COMMITTEE ON JUDICIAL ADMINISTRATION.

TO THE PRESIDENT AND MEMBERS OF THE AMERICAN BAR ASSOCIATION:—At the meeting of the Association in 1878, the following resolution was adopted:

Resolved, That the Committee on Judicial Administration and Remedial Procedure be, and they are hereby instructed to inquire and report to the Association, at its next Annual Meeting, upon the present condition of the law, as well statutory as established by judicial decisions in the several states, touching the mode of taking testimony and of perpetuating testimony out of court, with special reference to the class of officers authorized to take such testimony, and the power confided to them, and the formalities required for the same; and to make such suggestions on the general subject as to them may seem expedient, with reference to the expediency of any action on the part of this Association in respect to same.

In consequence of the long continued sickness of the Chairman of the committee, Gustavus A. Somerby, Esq., of Boston, terminating in his death, no action was taken by the committee during that year; and although further time for the report was granted by the Association in the next two years, the difficulty of gathering the information which it requires has made it impracticable even yet to accomplish the object.

In fact, the committee are under the impression that the work laid out for them by the resolution was larger than was intended or known by the Association. They have endeavored, however, to carry out the investigation to the fullest extent, by addressing a circular, in the first instance, to the Vice-Presidents in all the states which are represented in this Association, requesting them to assist by reporting the law and practice as to depositions in their respective states. This was deemed the surest method for obtaining late and authentic information.

At the first effort there was not a general response. By renewed application, the committee has been favored with reports from twenty-six of the states, none, they regret to say, having been received from Alabama, Colorado, Florida, Kansas, Louisiana, Minnesota, Nevada, North Carolina, Oregon, Tennessee, Texas, and Virginia.

To simplify the labor, the committee submitted to each of the Vice-Presidents a copy of the resolution adopted by the Association, together with the six following inquiries based upon it, to which they were invited to send a brief answer, presenting the statute or practice prevailing in their states respectively, upon each of these heads :

1. What modes of proceeding are allowed, whether by commission, or court or mere notice *inter partes*, or otherwise?
2. Especially, what officers or persons may execute such duties, and by whom or how designated for the occasion?
3. What power to compel witnesses to testify upon a commission or notice from another state or country, and to whom is it given?
4. Whether the examination must be upon interrogatories previously filed, or may it be oral; and must the names of the witnesses to be examined be communicated?
5. Who may be present, and what formalities must be observed in the examination? May the officer reject testimony offered? What are his powers generally?

6. To whom and how must the deposition be returned and publication made?

The answers to these inquiries have been collated under each of the foregoing heads, and in the same order as above presented; and the abstracts thus prepared, together with a seventh head relating to the statutory methods of "perpetuating testimony out of court," are presented in the form of an Appendix to this report.

The committee submit this Appendix for the information of such members as may wish to investigate the details, but will not venture to embrace it in their report.

The result shows, as probably must have been anticipated, a great diversity and multiplication of laws and practice in the various states, upon all the points suggested by the resolution. It would be impracticable to present them in any other form than that which we have used in the Appendix, and the committee trust to be excused if they have been guilty of some inaccuracies in reducing them to this form.

The general result of the reports made to the committee, pursuing the order of inquiries as stated, may be summed up thus :

First. In most of the states the mode of taking testimony out of court or by deposition is simply upon written notice between the parties, but with much variety as to the form and time of the notice required, and one or two material peculiarities in some of the states, which will be specially noticed.

In New Hampshire, Vermont, and Connecticut the notice has more formality, as it must be issued by a justice of the peace or notary, somewhat as a citation.

In Delaware, Maryland, Mississippi, and South Carolina it is still required that depositions shall be taken upon commission issuing out of court, according to the ancient practice, and other states adhere to the same method when depo-

sitions are to be taken without the state. In New York and Pennsylvania, as well as in the United States courts, letters rogatory are reported as being still in use between their courts and those of foreign countries for mutual aid. Whether this depends upon statutory provision or can be regarded as within the power of common law courts without such sanction is not settled. (Greenleaf, *Ev.*, sec. 320.)

Second. In respect to the class of officers authorized to take testimony by deposition, a matter regulated by statute in all the states, their range and variety is very wide, and we must necessarily refer to the second part of the Appendix for these differences. In not a few states it will be seen that this power is extended to any officer who is authorized to administer oaths. In most of the states it is common to any judge, justice of the peace, notary public, and mayor or chief magistrate of any city or town. In some states the clerk of a court and master commissioners are interspersed. In two or three states it will be seen that official examiners are appointed expressly for this work.

Where depositions are taken upon commission, the office is of course generally given to commissioners named; but in some states the commission is open, and may be executed by any of the classes of officers authorized to act upon the ordinary form by notice.

Third. With respect to the powers confided to officers authorized to take depositions, the committee have thought it worth while to make a special inquiry, under this head, as to the power to compel witnesses to testify upon a notice or commission issuing from another state or country, and under what circumstances or to whom this power is granted; and it will be found that in most of the states provision is made, in some form or other, for its exercise under a notice or commission from the other states, and that in many cases it is extended by comity in favor of foreign states. In three or

four states it applies also in aid of criminal as well as civil proceedings pending in other states or governments. On this point it is to be regretted that the reports have not been fuller, though not specially called for by the resolution of the Association.

Delaware, Illinois, Indiana, Nebraska, and South Carolina are the only states, apparently, in which no provision exists other than the general power of the courts, if such there be, for enforcing attendance and testimony by a witness upon proceedings pending in another state; whilst Iowa, on the other hand, seems to be the only state in which false swearing, in such cases, has expressly been made perjury. Whether, in the absence of such law—or at any rate of a law making it compulsory upon the witness to testify in a suit or proceedings pending in another state or country—perjury will lie for false swearing, was questioned in *Caillard vs. Vaughan*, 1 Brod. and Bing., cited in *Greenleaf, Et.*, sec. 324.

Fourth. As to formalities, and whether the examination of witnesses, taken by deposition, shall be oral and open, or close and confined to interrogatories in writing previously filed, according to the old practice in chancery: or whether, if verbal, the interrogatories must be set forth in the deposition, is left very much at large, and varies chiefly according as the method happens to be by commission or mere notice. In many states, however, where the commission is still in use, the interrogatories are not required to be filed in advance, and in some of them the practice seems to admit of a mere narrative by the witness, without entering the interrogatories to which it is in fact responsive: and in many, if not most of the states, it appears that the examination may be conducted by the attorney directly, as in court, the officer acting merely as the amanuensis, and without much formality of any sort. But in some states it is expressly required that

the interrogatories shall not only be entered in the deposition as put, but that they shall be put to the witness by the officer, though they may be framed by the attorney

In the states where depositions are taken exclusively upon commission and interrogatories, the law and practice is uniform that the examination shall be confined to the interrogatories and cross-interrogatories annexed to the commission, and neither parties or counsel are admitted.

Whilst, as already observed, the practice in most of the states is by notice merely between the parties, a distinction is in some cases made, where the witnesses are out of the state, that the examination must be by a commission, either with or without written interrogatories, as the practice may be.

In the states of Arkansas, Kentucky, and Missouri there is a peculiar provision in regard to the taking of depositions upon notice, which may be deemed worthy of special mention and the attention of the Association.

Upon any notice for taking depositions out of the state, or where more than three days are to intervene, the adverse party may, by a counter-notice given within the day succeeding the service upon him, require that the deposition shall be taken upon written interrogatories and cross-interrogatories, to be summarily filed so as to accompany the notice. The option, it will be observed, rests with the party who will thus lose the right of oral cross-examination, and thus no injustice is suffered. The advantage seems to be in avoiding the expense and difficulty to which he may be put, either in attending or employing distant counsel to attend for him; and when the deposition is to be taken in remote or out of the way places, such a privilege may obviously be highly convenient.

As to the remaining point, under the fourth inquiry—whether or not the names of the witnesses to be examined

must, as a rule, be disclosed in the notice or commission—it is found that the states are about equally divided.

Fifth. Among other differences as to practice and formalities is that as to open examinations; that is to say, whether the parties and their counsel shall be excluded at the examination; and it depends, as already stated, upon the method pursued—whether by close commission, with the interrogatories annexed, in which case they are excluded; or upon notice or open commission, when the practice is almost as uniform that they may attend.

The formalities to be observed, and the powers entrusted to officers authorized to take depositions, are too various for mention, and reference must be had to the Appendix for the details, particularly as to the much-vexed question as to their power to enforce the attendance or testimony of an unwilling or refractory witness.

Concerning the power of a commissioner or officer to reject testimony, we find there is an almost unbroken current of law and practice that he cannot exclude testimony, but if insisted upon, he must report it, together with the objection, to the court for determination. The only exception appears to be in Arkansas, though in Delaware and Georgia the officer may also state his own ruling. The officer is specially enjoined in some states to take down the language of the witness as nearly as possible, and without prompting or interference by counsel. In New York and Wisconsin the statute requires that he shall insert every answer or declaration made by the witness, which either party shall require. In some of the states there is a provision that the witness may correct his deposition before signing it, if he wish; but it does not appear whether this extends to the expunging of anything he may have said.

Sixth. The reports made in answer to the sixth inquiry. To whom and how must depositions be returned and “pub-

lication made"? indicate that little remains of this ceremony, once considered so important. We have not only lost the material distinction as to depositions *de bene esse* (originally signifying such as, by reason of some special emergency, were permitted to be taken before the issue was made up), but the solemnity of publication has become useless under the open and oral examination of witnesses upon mere notice. From the decision by the Court of Appeals of England, in *Vane vs. Vane*, reported in Wharton on *Evidence*, sec. 184, note, it seems to be obsolete in England also. The case involved a title, depending upon a disputed marriage and the defendant's legitimacy. It was sought to introduce depositions which had been taken in 1802, upon a bill to perpetuate evidence. But "publication" was resisted because the parties were not the same. The court overruled the objection, notwithstanding the old rule and authorities—Mellish, Lord J.—disposing of the precedents by saying "that the views of the courts as to the best methods to be adopted for the discovery of truth have entirely changed in recent times."

Generally, throughout this country, depositions are now returned to the clerk of the court, who may open and divulge the contents upon the request of either party and at any time.

Some show of formality is retained in a few of the states, by requiring depositions to be returned to the court by the officer taking them, and opened upon its order; but even in those cases we apprehend that publication is practically in the hands of the clerk. South Carolina is the only state where the rule keeps them closed until the trial, whilst in Massachusetts it would seem that the party who takes depositions may carry them open fourteen days before filing them.

Seventh. The inquiry made by the Association in the resolution, touching the mode of "perpetuating testimony out

of court," or in anticipation of a future suit, has not been generally answered in the reports sent to the committee; but it appears that in twelve of the states, at least, provision has been made by statute for a summary proceeding to perpetuate testimony in such cases.

Generally it must be upon petition to a court of record, setting forth the claim or case anticipated, and the names of the parties concerned; and after notice to them, the court is authorized to make an order for the examination of the proposed witnesses in the usual mode, and under terms prescribed. The depositions so taken are returned to the clerk of the court, to be filed for future use against the persons so notified, or those claiming under them, but under conditions more or less restricted in some of these statutes. The clerk in some cases is required to record them, and certified copies of the record made available.

This statutory proceeding may be had in Maine on application to a probate judge, justice of the peace, notary public, or clerk of the Supreme Court; in Massachusetts, on application to two justices of the peace, one of whom must be a probate judge, or the clerk of the Supreme Court, or a master in chancery, or a counselor-at-law; in New Hampshire, on application to two justices of the peace, one of whom must be of the quorum; in Rhode Island, to a master in chancery, and in Vermont, to the county court. In Maine, Massachusetts, and New Hampshire the depositions may be filed and recorded in the Registry of Deeds, and certified copies afterwards used.

CONCLUSIONS.

The committee are also instructed to make such suggestions on the general subject referred to them as they may deem expedient for the action of the Association; and the subject is one of such immense practical importance, even

if regarded only with reference to the relations and dependence of the judicial tribunals of the numerous states upon each other—a dependence constantly increasing—that it certainly behooves this Association to contribute every effort for enlarging all facilities between them, by comity and by uniform legislation, towards mutual aid in proceedings to obtain testimony.

The subject has still wider bearings. In any system of jurisprudence, the means of discovering the very truth of the matter in litigation must be a prime necessity. While the true mode of producing testimony, and the only one which for ages was practised in the law courts of England, is by presenting the witness face to face with the tribunal which is to weigh and determine the facts, the modern systems of procedure, yielding to necessity, now as universally in all civil cases, and some of them in criminal cases, admit the deposition of the witness in exceptional cases. Yet, although depositions now rank, in legal theory, as oral and primary evidence, it is not to be denied that eminent judges and authors have made observations by no means laudatory of this sort of testimony as a vehicle of truth.

Lord Erskine, when sitting in Chancery, referred to “the frail and imperfect mode of examining into facts in this court,” as making it almost a matter of right to have an issue of *devisavit vel non*. (13 Vesey, 91.) Few men had better opportunities than he for comparing and estimating the two modes.

Mr. Justice Grier, in a case of collision of ships and contradictory depositions by the crews and passengers, besides reflecting severely upon the provisions of the act of 1789, for taking depositions, made a general comment which is pertinent: “In such cases,” he said, “the oral examination of witnesses before the court, with a stringent cross-examination by skillful counsel, is almost the only method of eliciting

ing truth from such sources. Such a course of sifting out truth in doubtful cases cannot be pursued here." (13 Howard, 283.)

Perhaps the most remarkable comment upon testimony by depositions, taken by the chancery method, will be found in 3 English Law and Equity Reports, 73, where the case had been heard, by consent, upon affidavits, about two hundred in number.

Some disparagement of this species of testimony had been expressed in the argument. The Vice-Chancellor (Knight Bruce) gave his views at some length upon the relative value of evidence given by affidavit and by deposition, and said "that he was far from acceding to the opinion that universally or even necessarily depositions upon interrogatories are preferable to affidavits for the purpose of trying questions of fact, whether simple or complicated. And as to proof *vis à vis*, although often useful, and sometimes indispensable, cross-examination at law is sometimes, in skillful and often in unskillful hands, a weapon that recoils, and not very unseldom an instrument of injustice. But in equity it is something that, sitting here, I would rather not characterize. Considering that here the party cross-examining knows neither the answers that have been given by the witness nor the questions that have been addressed to him in chief, it ought not to excite surprise that in equity it is generally of no use whatever."

Notwithstanding these acknowledged infirmities had been exposed by the testimony taken and the reports made by the various English commissions for the reform of their law and chancery procedure, they were left without remedy; and until the Judicature Acts of 1873 and 1875, the old system of taking depositions continued in force. The sweeping provisions of those statutes have emancipated the subject so far from all the ancient forms, that the courts may now at

any time, for sufficient reason, order that facts may be proved by affidavit at the trial or hearing, on such conditions as the judge deems reasonable. (Orders 37 and 38, under sec. 20, Act of 1875.)

The committee feel some hesitation in recommending the Association at present to propose a similar advance in procedure in this country.

But in this country much of the frailty and imperfection which have led to the rejection of depositions and using affidavits instead, as in England, do, from other causes as well as this, attend the more free and open methods under which the taking of depositions has so long been practised.

The chief and obvious evil in the practice as it now prevails, is the inexperience and incapability of the officer who generally may now be employed to take depositions; especially in states where, upon a mere notice of the time and place, it is left to the attorney taking the deposition to select his own officer among any of the classes authorized, and not unfrequently a clerk or student in his office, conveniently equipped with a notary or master's commission. Nothing, of course, can inform the court or jury of the witness's manner or conduct; and as to that which is next in importance—the exact reproduction of his words as uttered—none but an experienced reporter is at all capable. And besides these difficulties, the prompting, the interruptions, and the interferences, which constantly beset the taking of depositions, require a control which few justices of the peace, mayors, or even notaries comprehend or exercise.

By reference to the Appendix it will be seen that in a few of the states the authority to take depositions is conferred upon a special officer, known in some states as commissioners and in others as examiners, and who are appointed by the court in each county.

This seems to the committee the simplest and most effectual mode of establishing a competent and independent class of officers for this duty. To make the office what is essential to justice, requires that it shall be exclusive and confined to a limited number.

In the second place, the Association might well invite the adoption, in all the states, of a law requiring witnesses to attend and testify in their own place of residence, upon proper requisition from another state or country, and also punishing perjury in such cases.

The committee further suggest, as worthy of consideration, the practice in certain states above referred to, by which the party served with notice or commission to take depositions in another state or country shall have the option, by prompt action, of requiring that the deposition shall be taken upon interrogatories and cross-interrogatories accompanying the notice, and without the attendance of parties or attorneys.

RUFUS KING,

GEO. W. BIDDLE,

Committee on Judicial Administration, etc.

APPENDIX.

CONTAINING AN ABSTRACT OF THE REPORTS MADE BY THE VICE-PRESIDENT IN EACH OF THE STATES, IN REPLY TO THE INQUIRIES STATED IN THE FOREGOING REPORT, CONCERNING THE LAW AND PRACTICE IN TAKING DEPOSITIONS AND PERPETUATING TESTIMONY.

I. *What modes of proceeding are allowed, whether by commission from court, or by mere notice inter partes, or otherwise?*

In Delaware, Maryland, Mississippi, and South Carolina the only mode is by commission issuing out of court.

In Illinois, Massachusetts, Michigan, Missouri, Pennsylvania, New York, and Vermont the mode is by commission, if the depositions are to be taken out of the state. In Georgia the same rule applies if taken out of the county.

In Connecticut, New Hampshire, Vermont, and West Virginia depositions may be taken upon notice merely, but it is issued by a justice of the peace, notary public, or other authorized officer in the form of a citation.

In all the other states depositions may be taken by notice *inter partes*, or by commission out of court, as the parties may prefer, whether the witnesses be in or out of the state.

In New York and Pennsylvania letters rogatory are used in taking testimony in foreign countries.

II. *By what officers or persons depositions may be taken?*

To avoid repetition, it may be said that commissioners are appointed in all the states (usually by the governor) to take depositions or affidavits, as well as acknowledgment of deeds in the other states, and generally, but not universally, the consuls and secretaries of legation of the United States in foreign countries have similar authority.

The class of officers authorized in the several states to take depositions are as follows :

Arkansas.—The commissioner named, or any person authorized to administer an oath, and whether in or out of the state.

California.—A judge or any other person authorized to administer an oath.

Connecticut.—Any justice of the peace, notary public, or person authorized to administer an oath.

Delaware.—The commissioners named by the commission.

Georgia.—Commissioners appointed by the courts in each county to take depositions.

Illinois.—Any judge, master in chancery, notary public, justice of the peace; or if the witness be in the army or navy, before any commissioned officer in the service.

Indiana.—Any judge, justice of the peace, notary public, mayor, or recorder of a city, or clerk of a court of record.

Iowa.—Any person authorized to administer oaths. If on commission and no commissioner named, it may be executed by any judge, clerk of court of record, or notary public.

Kentucky.—Any examiner, judge, or clerk of court, if within the state. Depositions may be taken out of the state by a Kentucky commissioner, or by a judge, justice of peace, notary public, or mayor.

Maine.—Any justice of peace, notary public, or judge of a court of record.

Maryland.—The commissioner named in the commission.

Massachusetts.—Any justice of the peace, if within the state. If out of the state, any justice of the peace, notary public, or officer authorized to take depositions by the law of the place, but in this last case it is discretionary with the court as to admissibility.

Michigan.—Any justice of the peace, judge of Circuit Court, or commissioner for the county.

Missouri.—If in the state, a judge, justice of the peace, notary public, or mayor or chief officer of a city or town having a seal of office. If out of the state, either of the same class of officers.

Mississippi.—By the commissioner appointed by the commission; or if no commissioner is named, then by any person authorized to administer oaths.

Nebraska.—If within the state, a judge of the Supreme, or District, or Probate Court, justice of peace, notary, mayor or chief magistrate of a city or town, master commissioner, or special commissioner. If out of the state, any judge of a court of record, justice of peace, notary, mayor or chief magistrate of a city or town.

New Hampshire.—If in the state, any justice of peace or notary. Out of the state, the same officers or any officer authorized to take depositions by the law of the place.

New Jersey.—By the commissioner named in the commission. If on notice, any judge of the Supreme, or Circuit, or District, or Common Pleas Court, commissioner of deeds, or any special commissioner of court.

New York.—By the commissioner named in the commission, or on notice, by any judge, justice of the peace, mayor, or officer designated.

Ohio.—Any judge or clerk of Supreme, Common Pleas, or Probate Court; justice of peace, notary, mayor or chief magistrate of any municipal corporation; master commissioner, or any person designated in a commission.

Pennsylvania.—Any magistrate, justice of peace, notary, judge, or commissioner of court, United States commissioner for the state, or any person designated by a commission.

Rhode Island.—Any judge of Supreme Court, justice of peace, or notary.

South Carolina.—By the commissioner appointed by the commission.

Vermont.—In the state, justice of peace, notary, or master in chancery. If out of the state, by the same classes of officers, or the commissioner designated by a commission, or by any officer authorized to take depositions by the law of the place, and in the same manner as authorized by such law.

West Virginia.—In the state, any justice of peace, notary, or commissioner in chancery. If in another state, the same class of officers or any other officer authorized by the law of the place to take depositions. In foreign countries, not only by the commissioner designated by commission, or any minister, *chargé d'affaires*, consul, or vice-consul, but also mayor or chief magistrate of a corporation, or notary in such country.

Wisconsin.—In the state, any justice of the peace, court commissioner, judge of court, or notary. If out of the state, any judge, court commissioner, master in chancery, notary, justice of peace, or commissioner of deeds.

III. *What power to compel witness to testify upon a commission or notice from another state or country, and to whom it is given?*

Arkansas.—Any judge, justice of the peace, or notary, upon production of the commission.

California.—Any judge, on production of a commission or notice, and affidavit of materiality.

Connecticut.—The commissioner may apply to a judge of the superior court to enforce attendance.

Delaware.—No provision.

Georgia.—On certificate of the commissioner or affidavit of the party applying, any judge of the superior court or the ordinary may enforce compliance.

Illinois.—No answer.

Indiana.—No special provision. Whether the general provision in the Revised Statutes of 1881 applies, *query*.

Iowa.—Same power, and to same officers as authorized to take depositions in this state, *and false swearing in such cases expressly made perjury.*

Kentucky.—The county judge, either on commission or notice from another state.

Maine.—Any magistrate or sworn officer, on notice and payment of fees.

Maryland.—Judge of the circuit court, on application by the commissioner.

Massachusetts.—Any justice of the peace may enforce same as in a suit pending in the state, and fine not exceeding twenty dollars for non-compliance.

Michigan.—Full provision, and subject to same penalties as in suit pending in the state.

Mississippi.—The commissioner appointed by court in any other state may enforce compliance.

Missouri.—The commissioner of any court of record in this or any other government may compel attendance and testimony of witnesses the same as any court in this state. Commissioners of other states residing in Missouri have the same power.

Nebraska.—No provision made.

New Hampshire.—Any justice of the peace or notary has the same power as in domestic suits.

New Jersey.—Judge of Supreme Court, on application of the commissioner and proof of the witness's refusal.

New York.—Judge of Supreme Court or county judge, on presentation of the commission, or notice, or authority of any court in the United States or a foreign country, *either in a civil or criminal proceeding*, and affidavit of materiality.

Ohio.—Any commissioner or officer having authority from the state, district, or territory where the suit is pending.

Pennsylvania.—Court of Common Pleas, by same process as in domestic suits. (Damages also given to the party injured.)

And the same power is granted to the commissioner appointed by any court of the United States, or of any state, district, or territory.

Rhode Island.—Held that magistrates having power to take depositions in this state may enforce testimony in suits pending in other states or governments. (*In re Jencks*, 6 Rhode Island, 18.

South Carolina.—Seems to be left to the ordinary power of the courts.

Vermont.—Any magistrate has the same power, and under same provisions as in domestic suits; and this extends to commissioners of other states residing in Vermont. *In criminal cases pending in other states* a justice of the peace, on certificate from the clerk of any judicial court, may compel witnesses to attend and testify, and a penalty is inflicted for failure.

West Virginia.—Circuit Court, on application of the officer appointed, will enforce. Damages are also given to the party injured by the refusal of the witness.

Wisconsin.—Any judge, clerk of a court of record, court commissioner, justice of peace, and municipal or police judge, after subpoena issued upon the notice or commission from another state, may compel attendance and testimony, as in a domestic suit.

IV. *Whether the examination must be upon interrogatories previously filed, or may it be oral; and must the names of the witnesses to be examined be communicated in the commission or notice?*

Arkansas.—Examination oral, but on notice to take depositions out of the state, the party served may, within one day after the service, by counter-notice, require the deposition to be taken on written interrogatories and cross-interrogatories, to be filed in time and manner prescribed. Names of witnesses not required to be notified.

California.—Examination oral, if upon notice. On commission it must be by interrogatories and cross-interrogatories, unless otherwise agreed. No answer as to notice of witnesses' names.

Connecticut.—Examination oral. Notice of the names of witnesses "should be given."

Delaware.—At law, the examination is oral. If upon commission, oral or written as shall be agreed. Names of witnesses must be notified in all cases.

Georgia.—Examination oral, if on notice, except in special cases (of which there are five by statute), in which interrogatories must be filed. Otherwise than upon notice, interrogatories must be filed, and in all cases the names of witnesses must be notified.

Illinois.—Either oral or written, both at law and in chancery. No answer as to naming witnesses.

Indiana.—Examination oral, if on notice; but if on *dedimus*, the interrogatories must be filed. By the Revised Statutes of 1881, the names of witnesses must be notified.

Iowa.—Oral, unless upon commission. Names of witnesses not required, except upon commission. If cross-interrogatories are not filed upon a commission, the code prescribes four which the clerk must annex.

Kentucky.—Examination oral, except by consent; or in cases where the adverse party is under disability, or constructively summoned, or special order of court, written interrogatories are required; and if more than three days' notice be given, the adverse party, by counter-notice within the day after the service, may require the depositions to be taken upon interrogatories and cross-interrogatories; or if the latter be not filed, the code prescribes four which the clerk must add. Names of witnesses must be notified, unless the depositions are to be taken within the county.

Maine.—Examinations oral, unless upon commission. Names of witnesses required in either case, unless waived.

Maryland.—Interrogatories must be filed, unless waived. Names of witnesses not required.

Massachusetts.—Examination oral, unless on commission out of the state. The statute does not require notice of names of witnesses, but the practice is unsettled. (See 15 Mass. 492; 9 Pick. 485–487.)

Michigan.—Oral except on commission. In chancery, names of the witnesses must be notified.

Mississippi.—Oral, if taken within the state; if out of the state, the examination must be upon commission, and interrogatories annexed. The names of witnesses must by law be notified, but in practice this is required only when out of the state. By Campbell's Code, 1880, the same rules now apply in all cases which formerly applied only as to non-residents.

Missouri.—Oral, unless upon commission, when interrogatories must be annexed, and names of the witnesses must be notified.

Nebraska.—Oral, and names of witnesses required.

New Hampshire.—Examination oral, but by rule of court the interrogatories must be put in the deposition. Names of witnesses not required.

New Jersey.—Oral, unless upon commission, in which case interrogatories must be filed. Names of the witnesses must be notified.

New York.—Oral, unless taken out of the state; in this case the interrogatories must be filed. The names of witnesses must be notified.

Ohio.—Oral, except upon commission, and interrogatories filed. Names of the witnesses not required.

Pennsylvania.—Oral, unless upon commission, which must be upon interrogatories filed: Names of the witnesses not required unless the court order it.

Rhode Island.—Oral, unless the order for a commission requires interrogatories to be annexed. Names of the witnesses not required, but customary to notify.

South Carolina.—Generally upon interrogatories filed with exceptions, where a party is examined or depositions taken before a referee or master, or in cases of deserting seamen, which may be oral. Names of witnesses must be notified.

Vermont.—Oral; but if out of the state, may be on interrogatories filed. It does not appear whether this is compulsory. Names of witnesses must be notified.

West Virginia.—Oral only, and the examination may be conducted either by the attorney or the magistrate. Names of the witnesses not required.

Wisconsin.—Oral, if upon notice, but the interrogatories must be entered in the deposition. The names and residences of the witnesses must be notified.

V. Who may be present, and what formalities must be observed in the examination? May the officer reject testimony offered? and what are his powers generally?

Arkansas.—Upon commission and interrogatories, the parties and attorneys are excluded from the examination, unless both are represented or seasonably notified. The testimony must be written by the officer or by the witness in his presence, and he must certify this as well as the time and place of taking it, the swearing of the witness, and that the deposition was read to and subscribed by him in the officer's presence. The officer may summarily decide objections, prevent insulting questions, stop the examination if unreasonably long or for mere vexation or delay; but in cases of doubt, the officer must admit the testimony and state the objection. He may enforce attendance and testimony by the witness by fine and imprisonment until compliance.

California.—The deposition must be read, corrected, and subscribed by the witness, and so certified by the officer. No answer as to his power, but it seems the officer must apply to court to enforce compliance by a refractory witness.

Connecticut.—Examination open. Parties and counsel attend. The officer cannot decide as to admissibility of testimony, unless it criminate the witness or is wholly irrelevant, but enters it with the objection. The statute is imperative that a deposition shall not be drawn up or dictated by a party or attorney or any one interested. The officer may compel appearance and testimony by summary arrest and commitment for disobedience.

Delaware.—On commission and interrogatories, none admitted but the witness and commissioner and his clerk. Before an examiner, the examination is oral, and the parties and counsel present. The powers of this officer and formalities in such cases as prescribed by Equity Rules Nos. 41, 42. The rules require that the testimony shall be written by the officer, or his clerk under his immediate direction, in narrative form, and signed by the witness. The officer cannot exclude testimony, but states it, together with the objection and his ruling thereon, with the fact also that the testimony was insisted on notwithstanding. No answer as to his power to enforce attendance or testimony.

Georgia.—Upon a commission, no person interested is admitted. The officer cannot exclude testimony, but states it with his ruling and the objection. The witness must first be sworn, and this and his subscribing must be certified. In case of refusal, the case is certified by the officer to a judge of the superior court or the ordinary, who may commit until the witness obey.

Illinois.—The officer certifies the common formalities of swearing the witness and his subscribing, and it seems he may enforce and punish for non-attendance.

Indiana.—Examination open, except when upon a *dedimus* and interrogatories, in which case parties and counsel are excluded; but oral cross-examination may be required upon three days' notice. The officer cannot reject testimony. The deposition must be read to the witness, and corrected as he desires. In case a witness refuse to attend or testify, the officer reports to a judge of a circuit or superior court, who may summarily deal with it as a contempt.

Iowa.—On commission and interrogatories, parties and their agents and attorneys are excluded, unless both sides be present; otherwise the examination is open. Language of the witness is required to be taken down as nearly as possible. He must be sworn, and the deposition read and subscribed by him. The officer has no power to reject testimony. He "may compel obedience to his subpoena, and do any other act of a court which is necessary to accomplish the purpose for which he is acting."

Kentucky.—On commission and interrogatories, the parties and their agents and attorneys are excluded. The witness being sworn, the testimony must be written by him or by the officer in his presence, and subscribed by the witness, which facts, as well as the time and place, must be certified by the officer, as also who was present during the examination. For refusal by a witness to attend, or be sworn, or testify, or subscribe the deposition, the officer may fine not exceeding thirty dollars, or imprison not exceeding twenty-four hours, but must report his action to the court, and the court may modify or annul his order. Not answered as to power to exclude testimony.

Maine.—Ordinarily no restriction as to attendance. In chancery cases on commission and interrogatories, none but "counsel of parties by their own consent" admitted. The officer cannot reject testimony, but reports it with the objection. He simply administers the oath and reduces the

testimony to writing, but may put questions if he pleases. If the witness refuse to attend or depose, the officer may commit by *capias*, as for a contempt, same as a court.

Maryland.—No restriction as to who may be present. The commissioner cannot reject testimony. On refusal of witness to testify, the officer certifies it to the court, which will issue attachment to compel compliance.

Massachusetts.—Examination open, if upon notice. If on commission, all persons other than the witness and the commissioner and his clerk excluded. The officer must first swear the witness and put the interrogatories and cross-interrogatories in their order, requiring a full and clear answer to each before the next is read or known to the witness. He has no power to reject testimony. If the witness refuse, it seems the officer must refer the case to court, which may fine not exceeding twenty dollars for the contempt. The recusant witness is made liable in damages to the party aggrieved.

Michigan.—Parties may attend. The officer cannot reject testimony. If the witness refuse to attend or testify, the officer must refer the case to the court, which may inflict statutory penalty of fifty dollars. The witness is also made liable to an action.

Mississippi.—No exclusion at the examination. The witness being sworn, his testimony must be reduced to writing by himself or the commissioner, or some disinterested person in the presence of the commissioner, and subscribed by the witness, and these matters certified by the commissioner. He has no right to reject testimony, but notes the objections. It seems that he may attach fine and imprison the witness until he complies, in case of his refusal to attend or testify.

Missouri.—No restriction as to who may be present. The officer must certify that the witness was sworn, his testimony reduced to writing in presence of the officer, and subscribed by the witness; also the day, hour, and place of taking the

deposition. His official seal and certificate is a sufficient authentication of itself, except when taken outside of the United States. He cannot reject testimony. If a witness refuse to attend or testify, the officer may commit, in the same manner and under like penalties as any court of record; but this is subject to certain penalties in case of a discharge by court upon *habeas corpus*. He cannot reject testimony, but reports it with objections.

Nebraska.—No restrictions as to attendance. The officer has no power to reject testimony, but receives all, and notes objections. The deposition must be written by the officer, or in his presence by the witness or some disinterested person. The general powers of the officer are not defined by law.

New Hampshire.—The examination is open; no exclusion. The magistrate must take down what the witness says *totidem verbis*, and without interference of counsel. He cannot reject testimony, but notes exceptions. The formalities are simple. Any justice of the peace or notary may attach a witness who disobeys, as for a contempt, and fine not exceeding ten dollars. The witness is also made liable for damages to the party injured.

New York.—The examination is public. The officer must swear the witness, and cause every answer or declaration in his testimony to be written out by a disinterested person, and then read and subscribed by the witness. He must sign each half sheet of the deposition, and with his certificate annex the commission with all the exhibits duly identified in the form prescribed by the statute. In case of a refractory witness, it seems that it must be referred to a court for process to compel compliance.

New Jersey.—No restriction as to persons present. The commissioner as well as the witnesses must be first sworn. The officer has no power to reject testimony. The witness must subscribe the deposition in his presence, and the pro-

ceedings be certified. It does not appear whether the officer may enforce the attendance and testimony of a witness, or whether, as under part third above, he must refer the matter to a court.

Ohio.—Examination open, whether on commission or notice. The witness must be sworn before testifying, and his testimony reduced to writing by the officer, or in his presence by the witness or some disinterested person, and subscribed by the witness. The officer must certify his proceedings in the form prescribed by statute. He cannot reject testimony, but notes exceptions. He may compel the witness to attend, testify, and subscribe the deposition by attachment, as for a contempt, and punish refusal by fine not exceeding fifty dollars and imprisonment until he submits; the witness being also made liable to the party injured for damages occasioned by his failure to attend or refusal to be sworn or testify. If the imprisonment be illegal, the witness may be discharged on application to a judge of the Supreme, Common Pleas, or Probate Court.

Pennsylvania.—On a commission, the parties and counsel are excluded, and the deposition is vitiated if this rule be violated. On letters rogatory, the rule is not so strict, but follows the practice of the country from which it comes. The officer cannot exclude testimony, but notes objections. He may commit the witness for refusal to attend or testify, but usually refers the case to the courts, which will summarily act.

Rhode Island.—No restriction as to persons present. The officer cannot reject testimony, but records objections. The witness must be sworn and examined by the officer, and subscribe his deposition. It seems the officer may compel attendance and testimony by attachment, as for a contempt.

South Carolina.—No one admitted at the examination of the witness but the commissioner and his clerk, who are

sworn to secrecy. The commissioner cannot reject testimony, but notes exceptions. It is an unsettled question whether a master or referee may reject testimony. Such an objection has been sustained in the Circuit Court, but the effect being dilatory, it is not usual. No answer as to general powers of the commissioner.

Vermont.—The officer does not exclude testimony, but reports it with the objections to the court. Testimony cannot be written or dictated by a party, attorney, or interested person. The witness must be sworn, and the deposition certified, sealed up, and indorsed by the officer in the manner and form prescribed by statute. The officer may compel attendance and testimony by commitment.

West Virginia.—No restrictions as to persons present. The officer cannot reject testimony, but notes exceptions. He must swear the witness, and certify and seal up the deposition. If taken within the state, his official character and seal need no authentication. In case the witness refuse, it seems the officer must report to the court, which on rule or notice may fine not exceeding twenty dollars, and compel attendance by attachment. The witness is also made liable to the party injured.

Wisconsin.—If on notice, no restrictions as to persons present. On commission, all persons but the commissioner and the witness excluded. The officer cannot reject testimony, and must insert every answer or declaration by the witness which either party requires. His power to enforce testimony does not appear, but it would seem he must refer the matter to court.

VI. *To whom and how depositions must be returned and publication made?*

Arkansas.—To the clerk of the court, either personally or by mail; or if taken out of the state, it may be returned

through the party taking it, his attorney or agent, who must make oath that it has not been opened.

California.—To the clerk of the court.

Connecticut.—To the clerk of the court, who files and may open it.

Delaware.—To the Chief Justice of the court, or in equity to the register, who open the depositions.

Georgia.—To the clerk of the court, either by mail or messenger, in which case his affidavit is required. The clerk may open on filing.

Illinois.—To the clerk of court, and opened only by the court on consent of parties.

Indiana.—To the clerk of the court, and opened by him on order of the court or request of parties.

Iowa.—To the clerk of the court, who may open and furnish copies, but hold the original.

Kentucky.—To the clerk of the court.

Maine.—To the clerk of the court. Publication informal.

Maryland.—To the judge of the court.

Massachusetts.—To the court; but the practice is to leave the depositions open and in custody of the party taking them; but they must be filed within fourteen days.

Michigan.—To the court. The clerk will open, and notify parties.

Mississippi.—To the clerk of the court, who must indorse the time of receipt and opens the depositions.

Missouri.—To the clerk of the court. If taken in a foreign country and language, the deposition must be taken in the language spoken by the witness; and when filed, the party taking it must forthwith cause it to be truly translated into English for the information of the adverse party.

Nebraska.—To the clerk of the court, who may open on the order of the court or request of either party.

New Hampshire.—To the clerk of the court, and either he or the party may open it.

New Jersey.—To the court, and opened either by order of the court or by the clerk.

New York.—To the clerk. No answer as to publication.

Ohio.—To the court, and opened by the clerk, either by order of the court or request of either party.

Pennsylvania.—To the clerk of the court, and ten days given to the adverse party to file exceptions.

Rhode Island.—To the court, and publication must be by order of the court or a judge thereof.

South Carolina.—To the clerk of the court, and opened only at the trial, and either party may then offer it.

Vermont.—Manner of returning not stated. May be opened by the court or the clerk when received.

West Virginia.—To the clerk of the court. Manner of publication not stated.

Wisconsin.—To the clerk of the court, and may be opened by the court or the clerk.

VII. *Summary modes of perpetuating testimony in anticipation of suit.*

Arkansas.—No answer.

California.—On petition to the judge of court, setting forth the case anticipated, names of the parties concerned and of the witnesses, the judge may order its allowance and designate the officer, the notice, and the place either in or out of the state; and if out of the state, the interrogatories must be filed. The depositions are then taken and returned in the usual way, and with the petition filed in the court allowing the order.

Connecticut.—Provision is made by the Revised Statutes of 1875, pp. 435-7, but details not reported.

Delaware.—No answer.

Georgia.—By application to superior court, an order for taking the testimony *de bene esse* may be obtained and filed in that court.

Illinois.—The Circuit Court on petition may allow a *dedimus* or commission either within or out of the state. The depositions when returned must be recorded by the clerk and then delivered to the party taking.

Indiana.—No answer.

Iowa.—No answer.

Kentucky.—The Circuit Court, on petition and after notice to the parties interested, makes an order for the examination in the usual mode. Depositions thus taken are filed with the clerk as in other equitable actions, and may be used in any subsequent action between the expected parties or their representatives, subject to all just exceptions.

Maine.—A probate judge, justice of peace, notary, or the clerk of the Supreme Court, on a written application, and after notice to the persons named therein as interested, may take such depositions, which may be filed and recorded in the Registry of Deeds, and the depositions or copies may afterwards be used. If the depositions are to be taken out of the state, the application may be to the Supreme Court, which orders a commission on interrogatories filed after notice to the parties named.

Maryland.—No answer.

Massachusetts.—On application to two justices of the peace, of whom one must be a judge of probate, clerk of Supreme Court, master in chancery, or a counselor-at-law, and notice to the adverse parties therein named, the depositions may be taken by them in the usual modes, and, with the application and their certificate, recorded in the Registry of Deeds. The depositions or certified copies may afterwards be used in any suit against the parties so notified or persons claiming under them. Depositions out of the state in such case may

be taken on application to the Supreme Court, and upon interrogatories on sufficient cause shown.

Michigan, Mississippi, Missouri, Nebraska.—No answers.

New Hampshire.—On petition to a court of record or two justices of the peace, one of whom must be of the quorum, and notice by them to the persons interested, depositions may be taken in the usual way, and when returned, may be recorded in the Registry of Deeds, and used in subsequent suits concerning the same matter and parties.

New Jersey.—No answer.

New York.—Provisions exist similar to the ordinary mode.

Ohio.—A judge of the Court of Common Pleas, on petition filed in that court, may forthwith order the examination, directing the time and place and the notice to be given to the persons named as interested. When it is shown that notice cannot be given, he must appoint an attorney to examine witnesses for them, whose fee shall be taxed in the costs. The depositions, if approved by the judge, are filed with the clerk, and the depositions or certified copies may be given in evidence in any trial between the parties named or their privies in interest, subject to exceptions for irrelevancy or incompetency.

Pennsylvania.—The English chancery practice, by bill to perpetuate, etc.

Rhode Island.—Any judge of Supreme Court or master in chancery, it seems, may take depositions to perpetuate, either before or after commencement of a suit. They are to be taken in the usual way, returned to the clerk of the Supreme Court, and recorded. But see *Remington vs. Peckham*, 10 Rhode Island, 550.

South Carolina.—No answer.

Vermont.—A judge of the Supreme or the County Court, on petition and notice to the adverse party, may take such depositions or grant a commission to take depositions out of

the state. When returned, they are recorded by the county clerk, and they or certified copies are admissible in any subsequent suit against the same party or any claiming under him.

West Virginia and Wisconsin.—No answer from either.

RUFUS KING.

CINCINNATI, *July 19, 1880.*

Vice-President of the American Bar Association,

DEAR SIR:

Referring to the annexed resolution adopted by the Association, I venture to ask the favor that you will assist the Committee on Judicial Administration, by sending to me, as early as practicable, a brief answer as to the statute or practice, in the state of _____ upon the following points:

1. What modes of proceeding are allowed, whether by commission from court, or mere notice *inter partes*, or otherwise?
2. Especially, what officers or persons may execute such duties; and by whom or how designated for the occasion?
3. What power to compel witnesses to testify upon a commission or notice from another state or country, and to whom is it given?
4. Whether the examination must be upon interrogatories previously filed, or may it be oral; and must the names of the witnesses to be examined be communicated?
5. Who may be present, and what formalities must be observed in the examination? May the officer reject testimony offered? What are his powers generally?
6. To whom and how must the deposition be returned and publication made?

If it be inconvenient to comply personally, will you be so good as to place this in the hands of a competent person for reply. If it can be returned early in August, you will greatly oblige, dear sir,

Yours, very respectfully,

Resolved, That the Committee on Judicial Administration and Remedial Procedure be, and they are hereby instructed to inquire and report to the Association, at its next Annual Meeting, upon the present condition of the law, as well statutory as established by judicial decisions in the several states, touching the mode of taking testimony and of perpetuating testimony out of court, with special reference to the class of officers authorized to take such testimony, and the power confided to them, and the formalities required for the same; and to make such suggestions on the general subject as to them may seem expedient, with reference to the expediency of any action on the part of this Association in respect to the same.

MAJORITY REPORT
ON THE
RELIEF OF THE UNITED STATES COURTS.

To the American Bar Association :

At your Annual Meeting, held in August, 1881, at Saratoga, the following resolution was adopted :

Resolved, That a special committee, consisting of the President, the President for the next year, and seven other members, to be appointed by the President, be appointed, with instructions to inquire into what adequate remedy can be provided for the delays now incident to the final determination of suits pending in the highest courts in the United States, with power to prepare, and in their discretion to print, their report or reports with all convenient speed, and that all the pending resolutions, substitutes, and amendments on this subject be referred to said committee.

The committee appointed under this resolution consisted of Messrs. Phelps, of Vermont (President of the Association); Clarkson N. Potter, of New York (President elect); Charles S. Bradley, of Rhode Island; John W. Stevenson, of Kentucky; Cortlandt Parker, of New Jersey; R. T. Merrick, of Washington City; Alex. R. Lawton, of Georgia; Rufus King, of Ohio; and Henry Hitchcock, of Missouri.

This committee, of which Mr. Phelps was chosen chairman and Mr. King secretary, met at New York on September 19 and 20, and again at Washington City on December 14, 15, and 16, where they had the privilege of conferring freely with the justices of the Supreme Court and prominent

members of the Senate and House then in session; and, without taking a final vote, adjourned to meet at New York on February 3. At one or other of these meetings all the members of the committee were present, and at none less than seven. On the 23d January, 1882, the committee were deprived, by the untimely and lamented death of Clarkson N. Potter, of the valued counsels of an associate who had taken the deepest interest in the subject referred to them, and to whose distinguished merit and ability the resolutions adopted by your committee and appended to this report are an imperfect though heartfelt tribute.

The vacancy so caused was filled by the unanimous selection of Mr. William M. Evarts, of New York, who accepted the appointment and took part in the final session held on February 4. At this meeting it became manifest that the differences of opinion developed by the fullest discussion of the merits of the principal plans for relief of the Supreme Court, already under consideration in Congress and throughout the whole country, would prevent a unanimous report.

The undersigned, a majority of your committee, respectfully report the following as the conclusions which they have reached, after the most earnest consideration, and after giving due weight to the views with which they are unable to agree:

The necessity of legislation by Congress for the improvement, if not the reorganization, of the judicial system of the United States, is not an open question.

The records of the Supreme Court of the United States show that for the first twenty years after its organization in 1790-91, the average number of causes pending annually was less than one hundred; and not until after 1843 did it permanently exceed an annual average of 150. During the past twenty years (1862-82) the average number of causes on the docket at the beginning of each term

has increased from less than 350 to nearly 1,200; and though the number annually disposed of has also increased during that period from an average of less than 150 to nearly 360, it is beyond the power of the justices to keep up with the constantly increasing arrears.

The last completed term of that court (1880-81) opened with a docket of 1,202 cases, of which 365 in all were disposed of during the year; leaving 837, or more than two-thirds of the docket untouched. It is only too familiar knowledge that the interval between the allowance of an appeal or writ of error in the circuit court, and the hearing of the cause at Washington, is on an average more than three years. Such delays offer a premium for vexatious appeals, and amount in many cases to an absolute denial of justice. The sacrifices too often made by suitors under the name of a compromise, in preference to the injury, sometimes the ruin, resulting from mere delay, are a reproach to the administration of justice—or rather to the system which thus clogs and fetters its administration. Significantly stands in *Magna Charta* that threefold pledge, that justice shall neither be sold, nor denied, nor delayed—*Nulli vendemus, nulli negabimus aut differemus rectum vel justitiam*.

On every side, for years past, from suitors, from Bench and from Bar alike, have arisen just complaints of this great evil, which it is in the power of Congress alone to remedy. But a short time before your last meeting, the actual situation was impressively, though temperately, set forth by a venerable and distinguished judge,* whose former experience as a member of that high tribunal give additional weight to his suggestions as to the best mode of relief. Repeated efforts have been made, with the earnest concurrence, if not at the suggestion, of the Supreme Court justices, to promote and

* See "The Needs of the Supreme Court," by Ex-Justice Strong, in the *North American Review* for May, 1881.

procure legislation by Congress to this end. Bills carefully drafted for that purpose have been introduced from time to time during several years past, but hitherto without result. State and other Bar Associations in almost every part of the country have repeatedly expressed the strong desire of the profession for a relief quite as important to themselves as to their clients; and the demand thus made upon Congress has been re-echoed by leading journals throughout the land.

But not for the Supreme Court alone is relief by legislation needed. From almost every one of the nine judicial circuits of the United States come equally well-founded complaints of the insufficiency of the judicial machinery provided in the existing circuit and district courts for the constantly increasing work of litigation. The addition made to the judicial force by the appointment of nine circuit judges under the act of 1869 has fallen far short of these constantly increasing demands, which have kept pace with the growing population and business of the whole country. How inadequate to those wants is the force now provided, and how imperative the demand for relief in this quarter also, has also been most impressively set forth by one in every way competent to testify.

It is obvious that the problem which these evils present is not one of easy solution. How to enlarge, or, if necessary, to replace, within the limits prescribed and permitted by the Constitution, the judicial machinery devised by our forefathers, and which admirably met the requirements of a population not exceeding one-tenth, and of litigation probably not amounting to one-twentieth of what now exists, so as that from the court of first instance to the court of last resort the course of justice throughout the vast territory and in all

* See "Needs of the Federal Judiciary," by Judge McCrary, of the Eighth Circuit, in the *Central Law Journal* (vol. xiii., p. 167) for Sept., 1881.

the tribunals of the United States shall be at once prompt, efficient, and uniform, and at the same time to provide a system sufficiently elastic and comprehensive to meet the inevitably growing demands of the future—this is the task before Congress.

During the past winter there have been gratifying indications that the national legislature may at last respond to the strong and universal public demand for action. At the present session of Congress several bills have been introduced with that purpose, which have been referred to and are now under consideration by the Judiciary Committees of the Senate and House respectively : of which three are pending in the Senate and four in the House. In these bills are substantially embodied all the suggestions or plans which have been devised, some of them by eminent members of the bench and bar, with a view to the solution of the problem above stated. The question is thus actually before Congress. It is the right, it may even be said to be the duty of the profession, especially through its representative organizations, respectfully to urge upon Congress that its action be no longer delayed, and to assist, if they may, in making that action wise.

It appears to the undersigned, however, neither wise nor appropriate, under these circumstances, for a body like this Association (*a fortiori*, for a committee appointed by it) to undertake to review these plans in detail, or to do more than indicate their convictions in respect of the general scheme of relief which should be adopted. It is of the greatest urgency that action should be taken, and taken in a direction likely to bring the best permanent results. This secured, Congress alone has the power, and therefore the duty, of determining and adjusting details; and the zeal which should insist upon relieving Congress of this duty would run the risk of defeating itself. The conclusions stated by the undersigned, therefore, relate only to the comparative merits of the three principal

plans now before Congress, considered with reference to their general and characteristic features.

In fact, it may be said that the question practically lies between two general plans. One of these is represented by a bill introduced in the House of Representatives by Mr. Manning, of Mississippi, and a similar bill introduced in the Senate by Mr. Pugh, of Alabama; another, by the Senate bill introduced by Judge Davis, of Illinois; and two House bills, one introduced by Mr. Payson, of Illinois, and the other (which it is understood was prepared by Judges Blatchford and Benedict) by Mr. McCook, of New York; for though there are important differences of detail between the three bills last mentioned, the general scheme of relief is the same in all. The House bill introduced by Mr. Hardy, of New York, and understood to have been prepared by a committee of the New York Bar Association, which provides for an increase of circuit judges and the holding of general terms of the circuit courts, coincides in principle, to that extent, with the bills last mentioned.

A third plan is represented by the bill introduced in the Senate by Mr. Miller, of California, and which was prepared by Judge Sawyer, of the Ninth Circuit. This bill adopts Senator Davis' plan, which Judge Sawyer (in his pamphlet advocating his own bill) considers "excellent, so far as it goes;" but, on the ground that a still larger force is needed, provides for the addition of nine more justices to the Supreme Court. The eighteen justices of the Supreme Court are then to constitute a "National Court of Appeals," inferior to the Supreme Court, sitting at Washington in two independent divisions, to which all appeals from the circuits shall first come. Still above this is to be the enlarged Supreme Court of eighteen justices, who shall sit together from time to time as the Supreme Court, only for the hearing of causes involving more than \$100,000, and appeals or causes trans-

ferred to it from the national Court of Appeals or on error from the state courts, as provided for in the bill.

The distinguishing features of this plan do not commend themselves to the undersigned, nor is it believed that they have received or are likely to receive general approval. Several objections are urged against them; as, that no increase is needed or generally desired in the number of the Supreme Court justices; that a new appellate court at Washington, inferior to the Supreme Court, would not only be unnecessary if the plan of intermediate appellate courts in the circuits were adopted, but would be unacceptable alike to suitors and to the profession, unless, perhaps, to those residing at or near the national capital; and that the new judicial machinery proposed by it would be cumbrous and expensive, without adequate necessity or return. These are weighty objections; nor have the undersigned found a sufficient answer to them in the reasons urged in support of any plan containing such provisions.

The nature and comparative merits of the two other plans remain to be considered.

The bill introduced by Mr. Manning in the forty-seventh Congress (December 16, 1881), provides in substance for the division of the present Supreme Court into three divisions or sections, of three judges each; for assigning, as nearly as possible, all equity causes to one division, all common law causes to another, and all admiralty and revenue causes and those to which the United States is a party to the third, except that the whole court in general session shall hear all causes requiring a construction of the Constitution of the United States or a treaty therewith, and all causes on error from a state Supreme Court. Each division is required to sit by itself and hear and determine the causes assigned to it; the concurring judgment of two or three justices in either division to be reported to the full bench, without any right

of review thereof accruing to any party, but with power in the court, if it deem proper, to order a rehearing in general session, in which case the judgment shall be that of a majority of the justices sitting. At least once a month the whole court shall sit in general session, at which "the judgments of the several divisions shall be delivered and entered upon the minutes of the court, and thereupon the court shall make such orders, judgments, and decrees as the nature of the case may require, or the rules of the court may direct."

This bill differs from the bill introduced in the forty-sixth Congress by Mr. Manning, in the important particular that the present bill omits the provision which its predecessor contained, for increasing the number of the Supreme Court justices to twenty-one; each of the divisions of said court therein provided for being constituted of seven justices instead of three, and the concurrence of at least six justices, (instead of two, as in the pending bill) being therein required for the decision of a cause by a division of the court. It is also to be noted that both of the bills introduced by Mr. Manning relate exclusively to proceedings in the Supreme Court, neither of them making any provision for the relief of the overburdened circuit courts.

The characteristic feature of the remaining plan for the relief of the federal judiciary, as well the Supreme as the inferior courts, which is common to the bills introduced respectively by Judge Davis in the Senate, and Messrs. Payson, McCook, and Hardy in the House, is that it proposes to create, in some form, in the several circuits now established by law or which may hereafter be established, an intermediate court of appeals, to which, in the first instance, all appealable cases shall be taken on error or appeal from the Circuit or District Courts; the judgment of such appellate court to be final in all cases involving less than \$10,000, except as to certain classes of cases, or questions arising in

cases, there decided, for the review of which by the Supreme Court, because of the nature or importance of the question involved and without restriction as to amount, provision is made by the plan in question. This plan excludes alike any increase in the number of justices of the Supreme Court, any division of that court into sections, and the establishment of any new appellate court at Washington City. It seeks to preserve for the Supreme Court the true function and dignity of a national court of last resort: whose exalted office is, not merely to furnish to disappointed suitors the opportunity of another hearing, but rather, in the interest of the people at large, and of the harmonious and orderly administration of justice throughout the land, to supervise and regulate the proceedings and correct the errors of all inferior courts, and thus secure to every citizen the uniform and equal protection of the laws, without denial or delay.

By this plan the needed relief is to be provided by sufficiently increasing the judicial force needed in the several circuits: as to which, there are different suggestions. The bills introduced by Judge Davis and Messrs. Payson and Hardy, for example, provide for appointing two additional circuit judges in each circuit: that drawn by Judges Blatchford and Benedict, and introduced by Mr. McCook, would increase the number of district judges, while authorizing them (as also does Judge Davis' bill) to hold circuit courts when assigned thereto. The material for the new appellate court is thus provided, as well as the force needed for present circuit duty. But whether the appellate court should include the circuit justice and two district judges, as well as the three circuit judges—as proposed by Judge Davis—or should consist exclusively of circuit judges detailed for that duty, or—as proposed by Judge Blatchford's bill—should consist of the circuit justice, circuit judge, and district judges, is again a matter of detail; the question being whether any

judge should sit in review of a decision made by himself. Into these details, however, the undersigned do not enter, for reasons already given.

This plan affords relief for the Supreme Court by limiting the right of appeal thereto from this appellate court. All the bills mentioned, except Mr. Hardy's, limit such right to cases involving, (1) more than \$10,000, or, without regard to amount involved, (2) the construction of the Constitution or a treaty or law of the United States; and (3) questions certified by the appellate court to be of such nature or importance as to require a final decision by the Supreme Court; in the two latter cases, only the specific questions of law in dispute to be certified up, and the decision of the appellate court on questions of fact to be final in all cases. Those most competent to form an opinion are satisfied that, with these limitations, the Supreme Court (after disposing of its present arrears) could easily keep up with its docket; while the highly successful and satisfactory results attained by the adoption by the State of Illinois, in 1877, for the relief of its then overburdened Supreme Court, of a plan in principle identical with this, not only justifies that expectation, but demonstrates that of the cases appealable to the court of last resort from an intermediate appellate court which commands respect and confidence, much less than half are in fact taken up. It has also been suggested that the Supreme Court, or two judges thereof, might well be authorized, upon inspection of the record, to allow an appeal based upon the nature or importance of the question involved, even in cases where the appellate court had declined to grant a certificate.

From this brief statement, the chief features of the plan in question may be discerned. Other proposed details, such as a review by the intermediate appellate court of law questions arising in criminal cases, and a review by it of certain

interlocutory orders pending the suit in the circuit court, and without staying the proceedings there, are beyond the scope of this discussion.

The undersigned are of opinion that, of these two plans, that one is greatly to be preferred which provides an intermediate appellate court in the several circuits.

To any plan for dividing the Supreme Court into sections or divisions, authorized to hear and determine causes independently of each other, insurmountable objections appear to the undersigned to exist.

They entertain the gravest doubt whether such legislation would not be in violation of the following provisions of Article III. of the Constitution of the United States :

"SECTION 1. The judicial power of the United States shall be vested in *one Supreme Court*, and in such inferior courts as the Congress may from time to time ordain and establish. * * *

"SEC. 2. The judicial power shall extend to all cases in law and equity arising under this Constitution. * * * In all cases affecting ambassadors, other public ministers and consuls, and those in which a state shall be a party, the Supreme Court shall have original jurisdiction. In all the other cases before mentioned, the Supreme Court shall have appellate jurisdiction, both as to law and fact, with such exceptions and under such regulations as the Congress shall make."

No elaborate argument can be necessary to show that these provisions are mandatory, to the effect that the Supreme Court, whether the number of its members be greater or less, is and shall be one body, acting as such, and that each suitor appearing before it is entitled to the benefit of the judgment of each one of its members, upon the merits of his case. The statutory provision (R. S. Sec. 673) that any six of the nine judges shall constitute a quorum, is perfectly consistent with this proposition. The number of the judges composing the court is discretionary with Congress, which

has seen fit to provide that such number shall be nine, when all the judges appointed are present, but that in case one or two or three are absent, the number of the court shall be, *pro hac vice*, reduced accordingly. In either case, the court remains one body, sitting as such, and as such fulfilling the requirement of the Constitution.

But it is something altogether different for Congress to provide by law that nine judges shall be appointed, of whom a part—whether three or four or five—shall sit as one body, exercising independently of their associates all the functions of a court, while other part or parts shall at the same time be independently exercising like powers. Here is no consultation, no combined or united action, no conclusion reached by the one court of which each of the nine is nominally a member; but, in everything except the name, the complete existence and active exercise of independent powers by separate and independent courts. Which of these two or three independent bodies is the “one Supreme Court” prescribed by the Constitution—to which, as one court, each member of each of these independent bodies professedly belongs? Even conceding, for argument’s sake, that Congress might declare that five or four or three of the nine judges should constitute a quorum of the court, that would not help the argument. If such were the law, it would still mean, as already stated, simply that in the judgment of Congress such less number, duly assembled as a court, was sufficient for that purpose; but it would also still mean that the absentees were to be considered for the time being as forming no part of the court. Any other construction, as it seems to the undersigned, would merely nullify the express provision that there shall be “one Supreme Court”—which necessarily excludes the existence of more than one such court, or (which is the same thing) of more than one body at the same time exercising the functions of such court.

Nor is the difficulty obviated by providing that the judgment of each division shall be entered as the judgment of the court. No one of the judges can exercise judicial functions except by authority of law, and the law cannot clothe him with any such functions except consistently with the requirements of the Constitution. A law, therefore, which, under whatever device or arrangement, should in effect authorize any one or more of these judges to exercise judicial functions except as a constituent member of the one Supreme Court provided for by the Constitution, would violate the spirit and intent of the Constitution, and would be simply void. Nor would the difficulty be met by providing that the conclusions separately reached by divisions or committees of the court, being submitted to and approved by their remaining associates, should then be entered as the judgment of the court. There are several objections to this. In the first place, it is the absolute right of each suitor to present his whole case, both as to evidence and argument, to each and every member of the whole court acting as such, as completely as the rules of the court and the convenient dispatch of business allows. He cannot enjoy this right, if only three of the judges really hear his case, and the remaining six determine it upon the report of those three or a majority of them. Each one of the judges has an individual duty to fulfill towards each suitor, which cannot thus be performed. Moreover, even were this a fulfillment of its duty by the court and the several judges thereof, the time necessarily occupied by the six judges in verifying the conclusions of the three—if they fulfilled their duty in that regard—would necessarily be equivalent to a hearing by the full bench; and if this were done, the supposed advantage of sitting in divisions would be thrown away entirely.

Moreover, aside from the constitutional question, the undersigned are strongly of opinion that the adoption of such

a plan would greatly impair the dignity of the court itself, by weakening the confidence of the community in its decisions, and by producing widespread dissatisfaction. In fact, in case of dissent, which is anticipated by Mr. Manning's bill, and would certainly occur from time to time—two judges only out of nine would finally decide the merits of a cause. It is no answer to this to say that provision is made for a rehearing by the full bench, if the court shall think proper. The law must be tested by what it provides for, not by what it permits. And the denial to the parties in a cause of any right of rehearing after an adverse decision by two judges out of three, is in effect a provision that two judges shall, so far as the parties are concerned, be the Supreme Court: other two judges being at the same time the Supreme Court in respect of other causes simultaneously argued, and other two in respect of other causes still.

If these reasons be sound, the question of any division of the Supreme Court is at an end. Even if they be not accepted as conclusive, they are certainly sufficient to raise a serious doubt; and a serious doubt as to the constitutionality of a plan so far-reaching in its results as this, is surely a conclusive reason for preferring to such plan any other whose constitutionality cannot be questioned, provided it give a reasonable promise of relief.

It also appears to the undersigned, that from this plan would result the greatest danger, if not the certainty, of conflicting decisions and an unsettling of the law. For this danger also provision is apparently made by the power given to the court to order a rehearing, presumably to be exercised whenever a conflict of opinion might arise. But no lawyer need be told that, except by actually investigating a cause, no judge who has not heard it argued can form an opinion whether such a danger is latent in the conclusions reached by his associates. The three judges of one division

might well agree in deciding a cause, upon a view of the evidence and law thereof which would not suggest to them that danger, nor induce them to refer it to the full bench. Unless, then, the other judges investigated the merits of the case, a rehearing would not be ordered, and the possible conflict might ultimately arise. The necessity still remains, therefore, for all the judges to examine the merits of each case, in order to guard against this danger; but, if this must be done, the supposed advantage of dividing the court is again thrown away.

On the ground, therefore, that a division of the Supreme Court into sections, whether its numbers remain as at present or be enlarged, would be contrary even to the letter of the Constitution, much more to its true intent—that it would impair the dignity and efficiency of the court and greatly lessen, if not destroy, the confidence of the people in the decisions promulgated in its name—and that these fatal objections cannot be avoided, unless by practically surrendering the advantage sought to be gained—the undersigned, after the most careful consideration, are unable to approve any plan for dividing the Supreme Court.

It may be proper in closing this report to allude to some objections which have been made to the establishment of intermediate appellate courts in the circuits.

It has been urged that the addition of so large a number of circuit judges as proposed by Judge Davis—two in each circuit—or the additional district judges proposed in the bill prepared by Judges Blatchford and Benedict, would involve great additional expense. The obvious answer is, that the present judicial force in the circuits is utterly inadequate to do the work thrown upon the courts; and that whatever expenditure is needed to provide adequate judicial machinery for the actual and increasing wants of the people, so far from being a needless expense, is the only true

economy. If there be any one direction in which a false economy would be mischievous, it is in the refusal or failure to provide, for duties so important and affecting interests so vast, a sufficient number of competent men to whom not only the honor but the compensation tendered should be a real equivalent for the professional emoluments which they must surrender in exchange. How many additional circuit or district judges are in fact needed, and whether in each or only in some of the circuits, is another question of detail, to be determined by Congress upon adequate inquiry.

Again, it has been urged that the establishment of nine appellate courts in the several circuits would tend to conflict of decisions, and consequent uncertainty in the law: and that the profession would be embarrassed by nine new sets of reports with which they must become familiar. But this objection overlooks the fact that the nine circuits already exist, with no appeal from any Circuit Court in civil causes under \$5,000, nor in any criminal cause—and yet conflicting decisions have caused no trouble. As to the new Appellate Reports, they would merely replace the present Circuit Reports. In truth the provisions alike of the Davis bill and that introduced by Mr. McCook, to the effect that a right of review on the part of the Supreme Court shall exist in every civil cause, without reference to the amount involved, wherein the construction of the Constitution or a treaty or a statute of the United States is involved, or a question arises the nature and general importance of which makes such appeal desirable, would greatly lessen the existing liability to conflicting rulings in the several circuits. In that respect the plan under consideration does really provide for a more complete supervision by the Supreme Court of all important decisions of inferior courts than has existed heretofore, and consequently would diminish instead of increasing the probability of inharmonious rulings in the several circuits.

It has also been doubted whether the establishment of these circuit appellate courts would have the desired effect of relieving the Supreme Court by reducing the number of appeals to Washington. But in this regard the plan in question furnishes more than one reason for favorable anticipations. By relieving the Supreme Court of the consideration of questions of fact, as to which the suitor nevertheless can be heard a second time in the intermediate court in proper cases, one of the chief causes of the plethora in the Supreme Court would be removed. Moreover, as already mentioned, actual experience of a system similar in principle, tested during five or six years past in Illinois, warrants the belief—in itself obviously reasonable—that a large number of cases which might be appealed to the Supreme Court will stop at the intermediate courts; such being the fact, as the undersigned learn from unquestionable sources, in that state. And, still further, the plan in question provides that (in cases under \$10,000) instead of sending up the whole record, only those questions of law shall be certified up in respect of which the decision of the intermediate court is complained of. Under these conditions, the expectation of great and adequate relief to the Supreme Court is more than reasonable.

Doubtless, the benefit to be derived from the establishment of such appellate courts depends upon the respect and confidence which they shall command, and it has been urged that men of such professional ability and standing as would command due respect and confidence, could not be induced to sit in them. But it will hardly be contended that the bar of the several circuits does not contain such men. The only question, then—if question there be on this head—is whether Congress will think it worth while to offer to such men such inducements as will tempt them to accept the position. The undersigned are not willing to assume that

Congress will fail of its duty in that regard. On the other hand, it appears to them that positions in such courts as these, adequately compensated, would present peculiar attractions to men of the highest standing at the bar of the several circuits, by adding new dignity to the office, already honored and honorable, of a member of the judiciary of the United States. And it also appears to the undersigned that the establishment of such appellate courts in the several circuits, aside from the relief so much desired, would be eminently satisfactory to the people at large, and therefore eminently wise; as bringing the complete administration of justice more nearly home to them in far the greater proportion of causes, and thus restoring, so far as possible in a territory so vastly enlarged, the similitude of those early days when the justices of the Supreme Court were able habitually to take part in trials on the circuit, and thus to reinforce and if need be to correct the judgment of their brethren on the circuit bench.

With the highest respect for those to whom these reasons are not equally convincing, the undersigned have therefore reached the conclusion that the general scheme for the relief of the federal judiciary which proposes the establishment of intermediate courts of appeal in the several circuits is that which promises the largest measure of success.

In pursuance of the unanimous vote of the committee at their meeting on February 3, the following resolutions, prepared by Mr. Phelps, the Chairman, are submitted as part of this report:

Resolved, That the members of this committee have received with deep sensibility the intelligence of the untimely death, since our last meeting, of our associate and dear friend, the Hon. Clarkson N. Potter.

“Resolved, That we are unwilling to proceed in the duties he so recently shared and was so warmly interested in, until we have expressed upon record our estimation of the noble intellectual qualities that distinguished him, and those charming traits of character that endeared him to us all, and our sorrow at the termination, in its prime and best maturity, of a life which achieved so much, and which promised so much in the future.

“Resolved, That these resolutions be made part of our report to the American Bar Association, and that the secretary of the committee be requested to transmit a copy of them to the family of Mr. Potter.”

Under the permission given by the resolution appointing said committee, which conferred upon them “power to prepare, and, in their discretion, to print, their report or reports with all convenient speed,” this report has been printed, and a copy sent to each member of the Association.

JOHN W. STEVENSON,
CHARLES S. BRADLEY,
RUFUS KING,
ALEX. R. LAWTON,
HENRY HITCHCOCK.

MINORITY REPORT
ON THE
RELIEF OF THE UNITED STATES COURTS.

To the American Bar Association :

The special committee appointed at the last meeting of the Association, "to inquire what adequate remedy can be provided for the delays now incident to the final determination of suits pending in the highest courts of the United States," have given to the subject assigned them, mature and prolonged consideration. They have held several meetings in Washington and New York, and have availed themselves, as far as possible, of opportunities for consultation with members of the federal bench and bar, whose courtesy and interest in the subject, and whose valuable suggestions, it is but just to acknowledge.

The committee, in common with the Association and the profession at large, sustained a severe and embarrassing loss during their deliberations, in the death of our lamented President, the Hon. Clarkson N. Potter. Believing that the state of New York should not remain unrepresented on the committee, its surviving members deemed it proper to fill the vacancy; and the Hon. Wm. M. Evarts, of New York, was unanimously elected in place of Mr. Potter, and has since acted with the committee.

The imperative necessity of some means of expediting the hearing of causes in the Supreme Court of the United States, is apparent. Thus far the committee are unanimous.

While this necessity has been generally recognized, some exact statistics may be useful to show its imminence. The number of causes now on the docket of the Supreme Court is about 1,200. Prior to the year 1847 the number had never reached 200, and had usually fallen much below that figure. It did not reach 300 until the year 1858. In 1870, for the first time, it exceeded 600. In 1875 it reached 974. In 1876 it exceeded 1,000, and in 1878 it exceeded 1,100. The increase is thus seen to have been regular, and of late years, rapid.

Previous to the year 1868, the court had in no year but one, been able to dispose of so many as 200 causes. Since that time the number disposed of annually has ranged from 230 to 411. The average disposition in the last eight years, through great exertions by the judges and prolonged terms of the court, has been about 360 causes. During this time the docket, notwithstanding this reduction, has increased from 676 to 1,202, the average annual accession having been about 425 causes. It is not doubted by the committee, that every practicable effort has been made by the court to reduce the volume of its business, and that a greater rate of reduction cannot be expected under the existing facilities; and to accomplish thus much, as the profession is well aware, the judges have been withdrawn from circuit duty, to an extent not altogether consistent with the theory of our system, or with its former practice.

It will thus be seen, that it would require more than three years to clear the docket of the court, with the best exertions in their power, even if no new causes were to be added during that time; that the annual accession to the docket considerably exceeds its reduction; and that even at the same ratio of increase that has hitherto prevailed, every five years that elapse may be expected to add one year to the period that must intervene between the entry of a cause and its decision. But it is not reasonable to expect that the same

ratio will continue in the future. It has steadily increased in the past; and in view of the rapid development of the country, the extension of its occupied territory, and the enlargement of its business, it is easy to see that the rate of accumulation will be constantly accelerated. The delay which now so nearly approaches, must soon reach the proportions of a substantial denial of justice, and unless relief is interposed, the court must become at no distant day, so far as its general jurisdiction is concerned, principally useful only to those who seek by appeal a long escape from the payment of judgments.

To attempt a relief, as some have proposed, by abridging the jurisdiction of the federal courts, would be in our opinion most unwise and unjust. Business between citizens of different states has of late years immensely expanded, both in amount and in importance. For reasons unnecessary to be considered, but stringent in their character, such causes as are authorized by law to be commenced in, or transferred to those courts, are more and more rapidly finding their way thither. Under the provision of the Constitution which extends their jurisdiction to this class of causes, it would be difficult, if not impossible, greatly to limit its amount. Any discrimination for that purpose must be based upon technical and accidental circumstances, that would exclude causes as much within the spirit and intent of the Constitution as those that are admitted. To reject these causes, to refuse the protection of the federal judiciary to even a portion of the litigants who reside in one state and have controversies with citizens of another, would be to reject the fundamental idea upon which that jurisdiction proceeds, at the very time when its importance in the administration of justice is most apparent. Such is not the theory of our Constitution, the policy of our legislation, nor the dictate of our experience. If mutual confidence is to be maintained between the people

of the different states, adequate and equal means for impartial inter-state justice must be furnished, as they always have been hitherto, and as the Constitution intends they should be.

Concurring, then, as all must concur, in the necessity of immediate relief to the Supreme bench in some other way, the committee have anxiously addressed themselves to the inquiry how that relief should be attained. Fully aware of the importance of a unanimity of recommendation, if much usefulness is to follow their labors, they have earnestly endeavored to assimilate their views, so as to unite in the proposal of a remedy. In this, unfortunately, they have not succeeded. Having considered, discussed, and finally thrown aside as impracticable or impolitic, various suggestions, they find themselves at last nearly equally divided in respect to two principal plans that have found favor in the profession. The one authorizing a division of the court, for the hearing in separate sections of such causes as may be thought proper to be heard in that way; the other providing for the establishment in the different circuits of local courts of appeal, with final jurisdiction in ordinary causes to an amount so large as would diminish appeals to the Supreme bench, to such a number as that tribunal might conveniently hear.

It is to be premised that the present system of appeals from the inferior courts to the Supreme Court would be universally admitted to be the best method, both in theory and practice, that can be devised, if it were only practicable to discharge the business under it, as has been done in former years. No one ever has proposed, or probably ever would propose to depart from it, except under the pressure of absolute necessity. Any other system, therefore, however wisely devised, must be at most only a second best; and no second best plan can be proposed that would be altogether free from objection. The question is not, therefore, whether

the remedy suggested is impervious to criticism, but whether it is the best the nature of the case admits of.

It has seemed to us, since it is universally agreed that appeals can be best heard, as they always have been, under our Constitution, by the Supreme Court at Washington, that if those judges find themselves now unable to discharge the business on their docket, the most obvious and simple remedy would be to enable them to discharge it; and this we believe can be done. No one familiar with the character of causes in that court, or who will take the trouble by examining the reports to make himself familiar with it, will fail to perceive, while that many appeals find their way there which involve questions of great importance and serious doubt, a large proportion of the business consists of causes not presenting any special difficulty, or any questions either new or important. That this class of causes can be as well or even better heard and decided by a lesser number of judges than nine, is obvious to every lawyer of experience, and is shown in the proceedings of many state courts of last resort, whose members do not exceed five, or sometimes even three. The decision of the House of Lords, the highest court of appeal under the English law, have always been rendered by judges not more than five, and often less; yet they are accepted by the bench and bar of the common law world, as in every respect among the highest and best expositions of English law. It is believed that very general judicial testimony would be given in favor of the proposition that a bench of four or five constitutes, for all ordinary purposes, the best working court; and that common causes will receive on the whole a better consideration and a speedier disposition by such a court than by a larger one. By the existing law, six judges of the Supreme Court of the United States constitute a quorum, and may, and often do hear and decide causes. Any sup-

posed necessity that, if the court consist of nine, all should participate, or appear to participate, in the hearing of every cause, would equally exist if it consisted of nineteen. Yet every additional member added to a bench that is already sufficient, tends obviously, in ordinary cases, to diminish the degree of personal responsibility and of personal attention. A judge who is one in five is much more likely to give a cause anxious and thorough attention, and to feel the responsibility of his decision, than if he were one of ten. And whether such is ostensibly the practice or not, every enlargement of a court beyond what its necessary duty requires, tends to induce the practice of delegating causes to a lesser number of judges, or even to a single judge, for examination.

All will agree that the original jurisdiction of the Supreme Court, conferred by the Constitution, should continue to be exercised by the whole court; that constitutional questions—those arising upon the construction of treaties with foreign nations—and difficult and important questions that may occur in causes of general jurisdiction, should also be heard and decided by the whole court. Beyond this, we cannot perceive that any great good is attained by requiring all the judges to participate personally in the disposition of every cause.

We therefore propose, without presenting any formal bill, the following legislation, as affording the best remedy we can suggest for the existing emergency:

That the Supreme Court should be divided into two or more sections for the hearing of the causes upon their docket, except such as are hereafter mentioned as proper to be heard before the whole court.

Such sections not to be made up by permanent assignment of judges, but by such system of division as the court may from time to time find expedient; no judge to sit upon review of his own decision; and the causes not to be distrib-

uted by their subjects, but according to the discretion of the court, under such regulations for the dispatch of business as they may deem expedient.

All causes pertaining to the original jurisdiction of the court, and all those involving questions under the Constitution or treaties of the United States, to be heard, as now, before the whole court; and likewise such other causes as the court may in its own discretion, or upon previous application, direct to be so heard.

Causes heard before either of the divisions, to be ordered by such division, if thought advisable, to be reargued before the whole court. Causes decided by a division, to be reported to the whole court before the decision is announced, and all judgments to be rendered as the judgments of the whole court.

This system, as will be perceived from the statistics above given, will so increase the present capacity of the court for the discharge of business, that it may be safe to assume that at least seven hundred causes, and perhaps more, could be disposed of yearly, taking one year with another—a rate of dispatch that would soon bring up the present arrears, and would afterward enable the court to hear causes, if not during the term in which they are entered, at the next term at furthest. And no increase of the court, or of any subordinate court, will be necessarily required. The plan presents also the further advantage, that other divisions of the court besides those now proposed, can hereafter be added by an increase in the number of judges, if the future enlargement of the business of the country shall render it necessary. No method of relief should be adopted that does not anticipate and provide for a contingency which experience shows may be so likely to occur.

It has been suggested that the scheme above proposed may be objected to, as contravening that provision of the

Constitution of the United States which requires that "the judicial power of the United States shall be vested in one Supreme Court." It is not believed that this objection will be seriously insisted on by constitutional lawyers. It is neither the intention nor the legal effect of the scheme to establish more than "one Supreme Court." That is by no means what is proposed. The court would still remain one for all purposes. Its most important hearings would always take place before the whole court. Any others might come before the whole court, when in their judgment it was thought advisable. In every case the whole court would first determine what causes should be heard by a division; that division, upon hearing the cause, would determine whether a hearing before the whole court should be required, and if required it would be had; upon the report by a division, of a decision arrived at, it would still remain competent for the whole court to require a further argument; and all judgments, when finally pronounced, would be judgments of the whole court. Can it be reasonably claimed that such a method of doing business creates two Supreme Courts? Manifestly it does not.

To maintain this objection, therefore, it must be further shown, that the constitutional provision for one Supreme Court requires not merely one tribunal, but that all its members, or at least a majority of them, should take part in the hearing of every cause before it. Upon what authority does this proposition stand? The Constitution declares that in all cases to which the judicial power of the United States extends, except where the Supreme Court has original jurisdiction, "it shall have appellate jurisdiction, both as to law and to fact, with such exceptions, and *under such regulations*, as the Congress shall make." Taking the two clauses together, it is plain that the first, which provides for the existence of the court, contains no require-

ment that any particular number of its judges shall be necessary to a quorum; and the second, which prescribes its jurisdiction, places the limit of the jurisdiction itself, and all regulations for the manner of its exercise, under the direction and control of Congress.

Such is the construction given to these clauses by the Supreme Court itself. In *Barry vs. Mercein* (5 How. 103) it is said, "By the Constitution of the United States, the Supreme Court possesses no appellate power in any case, unless conferred upon it by act of Congress: nor can it, when conferred, be exercised in any other form, *or by any other mode of proceeding*, than that which the law provides."

In the earlier case of *Durousseau vs. The United States* (6 Cranch, 307) the court held that while by the terms of the Constitution a large appellate jurisdiction is authorized, it is nevertheless so far placed under congressional restriction and regulation, that an act of Congress which prescribes certain subjects for it, must be construed as excluding all others. So that in order to determine the jurisdiction, the Constitution and the acts of Congress must be taken together.

Hence it has always been understood that Congress has power to direct how many judges should form a quorum of the court. They have exercised that power, and the constitutionality of their action has never been questioned. By the statute now in force, six judges are made necessary for a quorum. In the absence of any statute, five judges, being a majority of the court, would upon common principles, be sufficient. Whence did Congress derive the power to enact that more than a majority should be requisite for that purpose, unless under the clause of the Constitution above quoted? And if that clause confer the power, as is conceded, what limit does it prescribe to the exercise of the power? Is it to be doubted that if they may require six, they may equally require eight or nine? Or that they may provide,

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on the other hand, that four shall be sufficient to transact certain business thought proper to be done in that way? If Congress should enact that four judges might hear a petition for a writ of habeas corpus, or of mandamus, or a motion to advance a cause, or for a rehearing, could the proposition be maintained that such an act would be unconstitutional? If not, is there anything in the Constitution to justify the conclusion that Congress may authorize less than a majority to act in certain cases, and not in others? If the regulation of the manner in which the appellate jurisdiction shall be exercised, includes the power to prescribe, for any purpose, the number that shall constitute a quorum, it is certain there is no constitutional limit to the discretion of Congress in fixing that number, or in determining what portion of the jurisdiction of the court such a quorum may exert. The whole subject is left in the hands of Congress.

It may be said that if Congress can make four judges a quorum for certain purposes, then it could make one a quorum; which would be a perversion and abuse of the functions of the court. Perhaps they may. And so perhaps, by the same method of reasoning, they may enact that the whole Supreme Court shall consist of but one judge. In this, as in other subjects in the control of the federal government, the legislative powers of Congress are unlimited, except so far as they are directly inhibited by the Constitution. Such restrictions are but few. It is not the office of the Constitution to restrain even preposterous or destructive legislation, except in certain definite particulars. The safeguard against it is in the wisdom and discretion of Congress, in their responsibility to their constituents, and in the potency of public opinion.

Under the existing law, six judges being a quorum, four may decide a cause, though two or even three judges dissent, and two or three others take no part in the hearing. If this

law were repealed, then three might legally decide any cause whatever, upon a hearing before five, though the court comprises nine. Were the court divided into two sections, as we propose, the concurrence of at least three judges in either section would still be necessary to a decision. And in one of the sections, five judges, a majority of the court, would sit for hearings, no judge however sitting to review his own decision. That this power will not under the existing, and would not under the proposed system be abused, may safely be left to the discretion of the court, especially under the careful safeguards by which the proposed plan is surrounded. Otherwise it would be necessary to require that the whole nine should be present, or all business be suspended. And under such a provision we should have had no Supreme Court at all, during the last four years.

If, then, Congress may authorize for any purpose four judges to sit as a quorum, can it be material to the validity of their proceedings, how the other five are employed at the same time, whether in recreation or in other judicial duty? And if in other judicial duty, whether in circuit or appellate business? If absent on circuit duty, it would hardly be claimed that their absence would invalidate the action of a quorum sitting at Washington. And could it make any difference if they were themselves likewise sitting there, for the disposition of business similar to that in which their brethren were engaged?

We are unable to perceive, therefore, why Congress may not, in the exercise of the discretionary power over the subject conferred upon them by the Constitution, authorize a number of the judges less than a majority, to sit in the manner we have proposed, for the transaction of such business as Congress and the court may think proper to be so transacted; and why, as a necessary corollary of this proposition, Congress may not likewise authorize two divisions of the

judges to sit at the same time for that purpose, when the exigency of public justice renders it necessary. Whatever may be thought of the wisdom or expediency of the measure, the objection that it infringes the Constitution, is one that in our judgment will not survive examination.

Such was substantially the decision of the Court of Errors, in New Jersey, in reference to a similar statute, and a similar constitutional provision. (*Wood vs. Fithian*, 4 Zab. 838). The Constitution of that state created "one Supreme Court." The legislature authorized the division of it so that two branches might sit at the same time for the greater dispatch of business. The court held it not a violation of the Constitution. And the tribunal so divided has sat for many years in that way.

No other objection, so far as we know, has been suggested to the plan above indicated, unless it be that it is undesirable that any causes should be disposed of without the concurrence of a majority of the court in the decision. As has been already seen, such is not the existing law or practice, nor with any regard to the dispatch of business is it practicable that it should be. It is probable that ordinary business would be better discharged in the manner proposed, than by the whole court. And when it is remembered that the alternative, in the emergency in which we are placed, is between the hearing of the cause by four or five members of the Supreme Court at Washington, with the advantage of constant consultation with their associates, and of an argument or re-argument before the whole court when the case appears to require it, and a hearing of the same cause by three local judges constituting the proposed circuit courts of appeal, any two of whom must of course be authorized to decide it, it will be readily seen that the latter plan promises no superiority in the character of the decisions, or in the ability, or even the number of the judges who would participate in making

them. If an appeal can be heard by even four or five judges of the Supreme Court, what is to be gained by sending it to be heard by three judges of an inferior court?

It is proposed by those gentlemen who advocate the plan of local courts of appeal, to constitute one in each circuit, from the circuit and district judges, which shall sit in one of its larger cities. We have felt great respect for the opinion of our able and distinguished associates who favor this proposal, and have not failed to appreciate the arguments by which it is supported. Their views will be presented in a separate report. It is undoubtedly true that such a method of hearing appeals would bring the hearing nearer to the residence of the litigants, and considerably facilitate the convenience of the profession in the more distant circuits, and perhaps to some extent diminish the expense of appeals, by saving a journey from remote points to Washington. Though on this point it is to be remembered that, as the court could sit but in one place for each circuit, and many of these are very large, a considerable proportion of the appeals must after all be heard at a distance from the residence of the parties, and from the court in which the trial appealed from took place. So that the difference to counsel between the journey thus requisite, and the journey to Washington, is not so material.

But it appears to us that the grave objections which the plan of local courts encounters, far outweigh any advantages it may offer of convenience to counsel, or of diminution of expense to parties. In the first place, in order that this method should effect any relief to the Supreme Court, it will be necessary to provide that appeals to that tribunal should not be allowed in cases of ordinary jurisdiction, unless the amount in controversy is at least \$10,000. Probably a much higher limit than that would be necessary, because when the limit of the appellate jurisdiction of the Supreme Court

was enlarged in 1872, from \$2,000 to \$5,000, hardly any perceptible diminution in the docket resulted. And notwithstanding that limit, the number of causes on the docket of the court has increased from 676 in 1872, to 1,202 in 1880, although during that period, as has been already pointed out, the number of causes annually disposed of by the court considerably exceeded the number disposed of in any previous year. While on this point it is impossible to obtain exact data, without an amount of labor in the examination of the records of the court which it is not in our power to command, we believe, on the best information we have, that to enable the court to keep up with the business by reducing the amount of it by a money limit, would require that limit to be fixed at the present time at least as high as \$15,000, and perhaps as high as \$20,000, and would necessitate in the future a probable further advance in the same direction.

The number of people in the United States who are possessed of property to that amount, is comparatively small; the number of those whose controversies in the courts of justice attain such a magnitude, is still smaller. To the great mass of litigants, controversies involving between \$5,000 and \$15,000 are very serious and important, not unfrequently putting in jeopardy all they possess. The extension of the limit of the right of appeal to the Supreme Court from \$2,000 to \$5,000, has already been felt oppressive. Nothing but a supposed necessity has induced submission to it. And a further increase of that limit to a sum that excludes from the court so large a class of citizens, in controversies to them so important, and which involve questions as serious and as difficult as causes of a still larger amount, would be a measure, in the justice or propriety or policy of which we cannot concur, and which we believe would justly be regarded as a denial of the highest public justice to many citizens equally entitled to it. The Supreme Court would

thus be set aside, so far as its ordinary jurisdiction is concerned, for the benefit of wealthy men and great corporations. But the court was never intended for the use of the rich alone. It belongs to the people, in common with our other institutions, and should be made available to the people, to every possible extent. That some pecuniary limit must be fixed, to save the court from being harassed with small controversies, and to exclude from it causes not large enough to pay the expense of going there, is admitted. The sum of \$2,000, the original limit, has always been regarded as quite sufficient for that purpose; and while we do not recommend a present return to that figure, we cannot concur in any proposition to increase it.

Nor can we regard without apprehension the probable effect upon the position of the court itself, of thus withdrawing from it so large a share of its general jurisdiction. As the final arbiter upon all questions of constitutional law, it is one of the main stays of our government. No such function was ever before confided to a judicial tribunal. It can only be maintained in the discharge of so critical a duty, by being fast anchored in the public confidence and esteem. Such has been its good fortune hitherto, because it has been the Supreme Court in reality as well as in name. It has been the one national tribunal of last appeal, in which confidence has been strong, and to which resort has been secure; where the general law of the land has been habitually laid down. But that will be really the Supreme Court in the estimation of the people, in which the duties belonging to such a body are accustomed to be performed. If the one Supreme Court of the Constitution should be closed to ordinary access, and devoted by a high money limit principally to the service of the wealthy and the powerful; if the great body of those who transact the business of the country should be excluded from its doors, and

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compelled to accept for their part such humbler justice as the local tribunals may afford, it will not be safe to expect that the court will be able to preserve by its dignity the hold it has gained by its usefulness, or to escape by mere pecuniary elevation, from the consequences of popular estrangement. There would be grave danger that it might gradually become an object of public jealousy and aversion. If thereafter it should happen to be brought, in the determination of constitutional questions, into antagonism with popular feeling or party policy, its position would invite an attack, against which its means of defense would be small. De Tocqueville has well said of its power, "It is clothed in the authority of public opinion. They are the all-powerful guardians of a people which respects law; but they would be impotent against popular neglect or popular contempt."

We have been so far impressed by these considerations, as to have found them decisive against a plan at one period of our deliberations much discussed—the creation at Washington of an independent court of appeal, subordinate to the Supreme Court, with appellate jurisdiction in ordinary cases, not constitutional, up to \$15,000. We became satisfied that such a tribunal would tend to supplant and weaken the Supreme Court in popular estimation, and perhaps to endanger its ultimate existence.

Another very serious objection, in our judgment, to the institution of local courts of appeal, is to be found in its probable result upon the character and quality of the law they may be expected to establish. The body of the common law, as administered by the federal tribunals, is one of our most precious possessions. The purity and uniformity of it should be guarded with the greatest assiduity. It is the law, not of one state, but of all the states; not of a section, but of the entire people; not of local interests, but of the general welfare. It is the only homogeneous law we have. We have already

courts of the last resort sitting in thirty-eight different states, no one necessarily controlled by the decisions of any other. That the expositions of the law in these numerous tribunals should be fluctuating, far from uniform, and more or less of it far from sound, is unavoidable. That it should be pervaded by the influence of local institutions and traditions, of varying political sentiments and diverse financial, productive, and commercial interests, is naturally to be expected. But as the law thus established is supreme only in the state in which it is propounded, no grave results are to be apprehended to the citizens of other states, so long as they can have recourse, in the event of controversy with the citizens of such state, to the federal courts. That the decisions of the proposed local federal courts of appeal will be largely affected in the same way, seems to us inevitable. They would sit in districts very remote from each other. They would be necessarily composed of judges drawn from the circuits in which they exist. That views upon financial questions, political or quasi-political questions, social questions, and the general policy of the law, should vary and change under the pressure of local opinions, traditions, and laws, is inevitable. Law is at best but a reflex of the society and the civilization in which it grows up. To expect that distant tribunals, existing under widely different conditions of society and of public opinion, should be harmonious in the multiform administration which justice requires, is to expect the impossible. Such has never been the case, and never will be. The course of decisions in New England and the Southwest—in the commercial cities and the northwestern states—on the Atlantic and the Pacific coasts—can never be one and the same, if it depends upon their local tribunals. The whole theory and value of the federal administration of justice requires a uniformity and consistency of application, before which the citizens of all the states shall be equal.

But in place of that, we should have, under these local appellate courts, a mass of heterogeneous decisions on many points irreconcilable, and a law that would vary like the climate, with the latitude and the longitude. Nine tribunals, of last resort in the great majority of cases, would be kept in constant operation, and emitting an incessant series of reports, with no central power or ultimate court of appeal to regulate their conclusions. It would be but occasionally that a cause involving questions of difference between them would arise, large enough to be carried, and that would happen to be carried, to the Supreme Court of the United States. It is the everyday law, which is constantly applied to human business and human rights, that is of the greatest practical importance, rather than those cases of rare occurrence, to which political events or public feeling may give a more conspicuous prominence.

It is true that it is proposed by the advocates of this plan, to authorize the local courts to certify causes to the Supreme Court for decision, where the questions involved are of special importance. This would altogether fail to obviate the objection. An appeal should be a matter of right, not a matter of favor. It should be for the party to judge of its expediency, not for the court whose decision is questioned. Most lawyers know that the decisions in regard to which the courts who make them are most confident, are quite as often reversed as those in which they most distrust their own opinion. The court that renders a judgment, is not usually the proper tribunal to determine whether an appeal from it ought to be taken.

If, on the other hand, the practice should grow up in such courts of certifying to the Supreme Court any cause in which the defeated party insisted upon it, almost all their decisions would be thus appealed from, and no substantial relief to the Supreme Court would be obtained.

That sort of centralization which accumulates in the general government the powers that properly belong to the states, may well enough be deprecated. But that centralization which brings the federal judiciary under the control of one supreme head, and thereby secures the unity of its law, and the impartiality, of its justice, is essential, in our judgment, to the existence of such a judiciary, whose powers run into all the states, and may reach all interests, and which is instituted largely for the very purpose of securing all citizens from the consequences of local prejudice, and local jurisprudence. The proposed plan, as it seems to us, would result, not in preserving the "one Supreme Court," which the Constitution, with a far-seeing sagacity, provides for, but in the establishment, for all practical and ordinary purposes, of nine Supreme Courts, and as many more as the number of additional circuits that may, in the future growth of the country, be found necessary.

The creation of these courts would require as many new judges in each circuit as would be necessary to hold them; because the present circuit and district judges, probably without exception, find their whole time taken up with the duties already assigned them, and in many places are quite unable to keep up with that duty without additional assistance. Not less than three judges could be assigned to hold the courts of appeal. At least twenty-seven new local federal judges would therefore be needed. The salaries of these judges would amount to more than the aggregate salaries of the entire Supreme Court. How much better than that would be the addition, if any addition at all is necessary, of three or more judges, selected from the country at large, to the Supreme Court! But even that increase, as has been seen, is not at present necessary.

There is still another objection to the proposed dispersion of the ultimate federal judicial authority, which appears to

us to have great weight. To the perpetuation of the unity of our national government, the American people have found no sacrifice too large. But no sacrifice can be large enough to preserve it, unless it be cemented by the continuing attachment, the concurrent sentiment, and the everyday habits and interests of all its inhabitants. Public opinion is of subtle origin, of silent growth, and rapidly ripens into tradition. Traditions are stronger than institutions. Attachment to the Union may be frittered away by slow degrees and imperceptible influences, which no immediate power is strong enough to destroy. It seems to us that we should hesitate long before introducing any novelty into any department of the federal system, which would be calculated to withdraw from its common centre the sentiments or the habits of its citizens, or to wean them in the smallest measure from the idea of the one government, and the one authority of ultimate resort. It is better that our people, when they may need to deal with the functions of the national government, should still travel to the capital, however long and weary the journey may be.

The proposition to create nine local sub-executive departments, or nine local congresses, to sit for even limited federal purposes in widely distant sections of the country, would be justly regarded as almost the certain forerunner, if adopted, of so many ultimate divisions of the Union. The judicial authority, if less immediately conspicuous, is still one of the three great co-ordinate and inseparable agencies of the government. Like its cognate departments, it should continue to have, as it always has had, one locality, one head, one paramount authority. Minor inconveniences, local ambitions, facilities to busy counsel, and savings in traveling expenses, should count for nothing in comparison with it. The old and tried theory of our Constitution, under which the federal tribunals have thus far maintained their high

place in the general confidence of the country, has centralized their principal authority at Washington, conspicuous before the whole people; and at the same time has sent out its individual members to know and be known by the different localities, and to carry as well as to learn there the practical administration of the law which the central tribunal has established. This theory, it seems to us, should not hastily be departed from. We cannot doubt that ultimate reflection will satisfy wise men, that it is better by simple means to enable our Supreme Court to do what it always has done, and what all will concur in the desire it always should do, if possible, rather than to relieve its press of business by an expedient so novel, so foreign to our old traditions, and in many ways so hazardous.

How far an increase of the number of the judges of the Supreme Court to the number of twelve or more, may now or hereafter be desirable, is a point upon which we refrain from any recommendation. Our duty as a committee is limited to the consideration of the present necessity. It may not be out of place, however, to suggest that twelve or even fifteen judges is a far smaller number in proportion to the present territory, population, and business of the country, than seven judges were from 1807 until 1837, when the present number was first established by law, or than six judges were from the first organization of the court in 1789 down to 1807. Originally there were but thirteen federal judicial districts; now there are fifty-eight, and others will soon be added. Many of the circuits are already so large as to render the circuit duty required by law of the Supreme Court judges impossible; and they must continually increase in size, unless they are enlarged in number. The Fourth Circuit now includes the states of Maryland, West Virginia, Virginia, North Carolina, and South Carolina; the Fifth, the states of Georgia, Florida, Mississippi, Louisiana, Alabama,

and Texas: the Eighth, Minnesota, Iowa, Missouri, Kansas, Arkansas, Nebraska, and Colorado. These circuits are obviously too extensive. It is impossible for their circuit judges to discharge the duty required.

A moderate increase of the Supreme Court, while it would make each of the proposed sections as large as the present legal quorum of the whole court, and would admit of a division into three sections, if ever found necessary, would likewise reduce the size of the circuits, by enlarging their number, relieve the overburdened circuit judges, and enable the Supreme Court judges to perform necessary circuit duty. It is believed to be the general sentiment of the profession that they should not be wholly withdrawn from that duty. The policy of our law in the federal courts, and in most of the state courts, has always prescribed it. Such is the English system, whence ours was derived. No common law judge has ever sat in England who did not also regularly hold *nisi prius* courts.

It has been thought that a court of twelve or more judges might be too numerous for the dispatch of business, and would tend to too great diversity of opinion. In ordinary cases this is true, as has been already pointed out. The whole court would, however, under the proposed plan, be convened only in special cases of unusual difficulty or importance. For such rare occasions, and for such a purpose, it would not be found to be too large, too slow, or too deliberative. For very many years the twelve judges of England, who sit on ordinary occasions in different courts, were accustomed to be brought together for the hearing of questions of special magnitude or embarrassment. The tribunal thus formed was the most august known to English law; was never thought unmanageable; and their very differences of opinion upon such questions, elicited discussion and deliberation that were most salutary and satisfactory.

Another subject has also engaged the attention of the committee—that of providing for some review of the decisions of a district judge sitting alone, to try cases not large enough to admit of appeal to the Supreme Court. At present no means exist for any such revision, except by application to the judge to reconsider his own ruling. This remedy has never been commended by experience.

The committee are unanimous in the opinion that some such review should be provided by law. No single judge should sit to try causes that involve so much as \$5,000, from whose decision there is no appeal. Neither in England nor in any American state is this allowed. Appeals can usually be taken in cases of any amount, however small, and always where the amount is large enough to be material. To this rule the federal courts, in this class of cases, form the solitary exception.

We do not deem it necessary, however, to create for this purpose any additional judges, or to organize any new tribunals. We simply recommend that it be provided by law, that any bill of exceptions reserved on the trial of any action at law in the United States Circuit or District Courts, and any petition for rehearing in any equity suit that has been heard in a United States Circuit Court, shall be heard at a term of such Circuit Court when the circuit judge, or a judge of the Supreme Court of the United States, shall be present. And that it shall be the duty of the circuit judge, and of the judge of the Supreme Court who shall be assigned to the circuit, to arrange for the holding of at least one term in each year in each district, at which one of those judges shall be present, and where bills of exceptions and petitions for rehearing in equity shall have precedence.

This method was formerly in force, in some of the circuits at least, under rule of the court. It was found

to work to the entire satisfaction of the bar, and to provide all the review necessary in the cases referred to, in a simple and inexpensive way. Its restoration by statute would, it is believed, be every way desirable. The committee are unanimous in recommending this change, in the event that the local courts of appeal before referred to should not be created; except that one member (Mr. Hitchcock) prefers to express no opinion, except in favor of such courts.

The same method of revision ought also to be made applicable to decisions of the district judges upon certain important interlocutory motions; especially those for injunctions and receivers, and those which settle all litigated matters preliminary to an accounting. Such motions often involve the entire merits of a case, and are sometimes virtually decisive of it. Great interests may turn upon their decision; and even in cases large enough for appeal to the Supreme Court, no appeal can be taken until after the final decree in the cause. Meanwhile much hardship may intervene if the decision is erroneous, that cannot be redressed by the ultimate reversal.

EDWARD J. PHELPS, *Chairman*.
CORTLANDT PARKER,
WILLIAM M. EVARTS,
RICHARD T. MERRICK.

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REPORT

OF THE

SIXTH ANNUAL MEETING

OF THE

AMERICAN BAR ASSOCIATION,

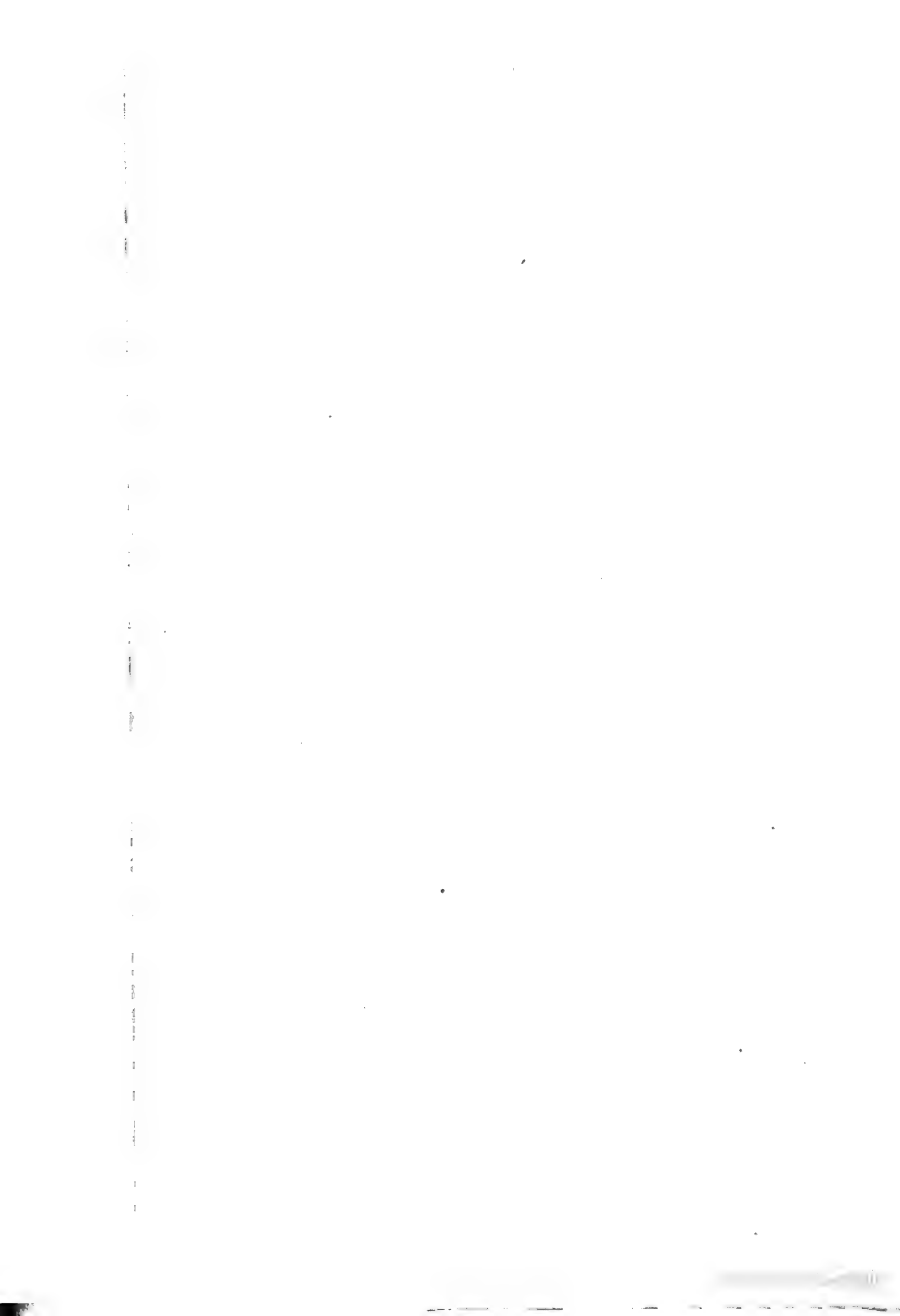
HELD AT

SARATOGA SPRINGS, NEW YORK,

August 22d, 23d, and 24th, 1883.

PHILADELPHIA:

PRINTED BY GEORGE S. HARRIS & SONS, 718-724 ARCH STREET.
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TRANSACTIONS OF THE SIXTH ANNUAL MEETING
OF THE
AMERICAN BAR ASSOCIATION,

HELD IN
PUTNAM HALL, SARATOGA SPRINGS, N. Y.,

August 22d, 23d, and 24th, 1883.

— • — — —

Luke P. Poland, of Vermont, Chairman of the Executive Committee, called the meeting to order at about ten o'clock on Wednesday morning, August 22d. Mr. Poland said:

We have met to hold the Sixth Annual Meeting of the American Bar Association, and the first business in order is the Annual Address by the President of the Association. I have, therefore, the pleasure of introducing to you the President, General Lawton.

The President then read his Address. (*See Appendix.*)

Upon conclusion of the Address, Judge Poland said:

I am instructed by the General Council to propose, on their behalf, nominations of the following persons members of the Association.

(*See List of Members Elected at the end of the Minutes of Proceedings.*)

On motion of C. C. Bonney, the Report was received and adopted.

On Judge Poland's motion, a recess of ten minutes was taken, in order to allow time for the members from the several states to consult about nominations for the General Council. After the recess, the Secretary read the list of states, and the General Council was elected. (*See List of Officers.*)

The Secretary then read his Report, as follows, viz.:

(a) Obituary notices have been prepared of members who have died during the year, and they will be printed with the report of our *Transactions*.

(b) The number of members on the Roll of last year is 581, of which 94 were added at the last meeting, and 107 members signed the Register, showing their attendance at the meeting of last year. There have been 706 members in all since the commencement of the organization, showing that 125 have died, resigned, or dropped out.

(c) The Executive Committee have had under consideration the subject of an amendment to the Constitution, in regard to the election of members, and their Chairman will report an amendment.

(d) The Association, at last meeting, voted, by 38 ayes to 27 noes, to meet this year at Green Brier, White Sulphur Springs, in West Virginia: but the proprietor of the hotel found it impossible to accommodate us.

(e) The Executive Committee have adopted the following by-law, which is proper to be submitted to the Association for its approval, viz.:

"The Secretary and Chairman of the Executive Committee shall endeavor to arrange with the Smithsonian Institution, or otherwise, a system of exchanges by which our *Transactions* can be annually exchanged with those of other Associations in foreign countries, interested in jurisprudence or governmental affairs; and also that the Secretary exchange



our *Transactions* with those of the State and Local Bar Associations; and that all books thus acquired be bound and deposited in the charge of the New York City Bar Association, subject to the call of this Association, if it ever desires to withdraw or consult them, if the former agrees to such deposit."

(f) At the last meeting of the Association, I requested vice-presidents, members of the General Council, and others from the several states, to suggest names to be laid before the Executive Committee, to assist the committee in making selections of proper persons to read papers; and if this course be approved, I will continue it.

(g) Two thousand copies of the Annual Report were printed last year. The work was done in Philadelphia, under the supervision of the Treasurer. As the work can probably be done there better than in Baltimore, I will continue that arrangement. I am indebted to the Treasurer also for his attention to printing various notices and circulars at my request.

(h) There are delegates present from several state associations, whose names I will announce hereafter.

(i) There are a few more members present at this meeting than at the last meeting.

Wednesday Evening, August 22, 1883.

The meeting was called to order by the President, at eight o'clock.

Judge Poland said:

Mr. President,—I am instructed by the Executive Committee, to propose an amendment to Article IV., on the Election of Members.

The first clause of that article reads thus: "All nominations for membership shall be made by the Local Council of the state to the Bar of which the persons nominated belong. Such nominations must be transmitted in writing to the Chairman of the General Council, and approved by the Council on vote by ballot." In all cases where gentlemen have been recommended for admission through a Local Council, there has been no difficulty; but where nominated at the Annual Meeting, the General Council have had very little means of ascertaining about the qualifications of gentlemen proposed. Therefore we think that the Constitution ought to be amended so as to afford a sufficient guarantee. We therefore propose to amend the second clause thus: It now reads, "The General Council may also nominate members from states having no Local Council, and at the Annual Meeting of the Association, in the absence of all members of the Local Council of any state." Now we propose to add, "*Provided*, That no nomination shall be considered by the General Council unless accompanied by a statement in writing by at least three members of the Association from the same state with the person nominated, or, in their absence, by members from a neighboring state or states, to the effect that the person nominated has the qualifications required by the Constitution, and desires to become a member of the Association, and recommending his admission as a member."

The amendment was then adopted.

Judge Poland, as Chairman of the Executive Committee, then proposed an amendment to Article X. of the By-Laws, and said:

There is no provision in the article for keeping any record of the doings of the General Council. Some member of the committee generally acts as secretary. The

Secretary of the Association has had a difficulty in making up the record of what is proposed by General Council. The amendment proposed is as follows: "The Secretary of the Association shall be the Secretary of the General Council." It is proposed to add to Article X. by inserting it under the first paragraph.

The amendment was adopted.

W. H. H. Russell, of New York, offered the following resolution:

Whereas, The Lord Chief Justice of England is about to visit this country; *Therefore, be it resolved*, That the President and Secretary of this Association send an invitation by telegraph to Lord Chief Justice Coleridge and his associates to attend this meeting upon their arrival in New York City.

Richard Vaux, of Philadelphia, said:

It is a subject which has engaged the attention of this body, as I know. It would be extremely gratifying that Lord Chief Justice Coleridge and his associates should be our guests at the dinner on Friday night. To accomplish that requires more than the simple sending of an invitation to be present: and it has occurred to me, though I do not feel as if I were yet ready to formulate the proposition, that the appointment of some committee, who should, before the dinner, visit New York, or at least send their message, would be the right way to do it. I would suggest that this matter lay over till to-morrow morning, when it can be put in the proper form.

E. F. Bullard, of New York, said:

I would venture to suggest that this subject be referred to the Executive Committee. The gentlemen in question are not expected to arrive before Friday, by which time arrangements can be made for prompt telegraphic com-

munication, should the steamship arrive. It may be very proper for the Executive Committee to secure some appropriate action for the Association. I therefore move as a substitute, that the resolution be referred to the Executive Committee, with power to act.

The substitute was accepted.

Edward Otis Hinkley, the Secretary, said that the Executive Committee had already had the matter under consideration, and had sent a formal invitation to Lord Coleridge to attend this meeting, some time ago.

The resolution was adopted.

Robert G. Street, of Texas, then read a paper on "How far Considerations of Public Policy may enter into Judicial Decisions." (*See Appendix.*)

Seymour D. Thompson, of Missouri, read a paper on "The Abuses of the Writ of Habeas Corpus." (*See Appendix.*)

After a brief discussion as to the announcement of a discussion upon the subjects suggested by the papers read, and as to the propriety of so doing that evening, it was moved and adopted that the discussion be postponed to the next day's session at ten o'clock.

Thursday, August 23, 1883.

The meeting was called to order by the President, at ten o'clock A. M.

The President said:

According to the programme prepared, the first business in order this morning is the reading of the paper by Mr.

Shirley. I will announce now, in order that it may be understood, unless the Association otherwise direct, that the next business in order, after the reading of Mr. Shirley's paper, will be the discussion of the papers read yesterday, as well as that to be read this morning.

Edward Otis Hinkley said:

It has been usual to make a special announcement of the names of the delegates of the state Bar Association who are present. They are as follows:

Alabama, George F. Moore.

Tennessee, John M. Gaut and R. D. Frayser.

Missouri, John L. Thomas and Gardiner Lathrop.

John M. Shirley, of New Hampshire, then read a paper on "The Future of our Profession." (*See Appendix.*)

Judge Poland presented, by instruction of the General Council, several names for membership.

(*See List of Members Elected.*)

The President said:

Discussion is now in order upon the various papers that have been read.

Richard Vaux, of Pennsylvania, said:

The Philadelphia Law Association, last winter, took up the consideration of the proposed acts of Congress relieving the pressure of business in the federal courts of the United States. That subject was referred to a committee. It spent a very long time in the consideration of the subject, and made a report, which was adopted by the Association; whereupon the Law Association passed a resolution directing the committee to lay this report before the Bar Association of the United States. I ask permission to present the report, together with a resolution. I now move that these papers be laid on the table.

There being no objections, it was so ordered.

E. F. Bullard, of New York :

I move that Mr. Vaux's report be now read for information.

Mr. Vaux :

I offer no resolution now for the consideration of the Association. I state that the accompanying report, presented to the Law Association of Philadelphia, was adopted by it; and the Association thereupon instructed the committee to take the necessary steps to bring its report before the American Bar Association, at its Annual Meeting at Saratoga.

Mr. Bullard: I would like to hear it read.

Mr. Vaux: It would take too much time now.

Mr. Vaux's resolution was adopted.

William P. Wells, of Michigan :

It seems to me that a very important and interesting portion of the admirable paper by Mr. Shirley, which has just been read, was that which related to the dispatch of business by the tribunals of last resort. I think members of the Bar from every state can speak feelingly upon this subject. It is no disparagement of, or criticism upon, the tribunals to say that the increase of business, which imposes upon them the duty of deciding so many cases, renders it almost an impossibility for them to dispose of business with a due regard to the rights of suitors and the established principles of law. Notwithstanding this, it cannot be forgotten that the courts exist that causes may be tried; and that causes cannot be properly adjudged unless they are properly heard and considered. Now, there are two consequences which result from this disposition of judges to hasten the disposal of business on the docket.

In the first place, its effect upon the rights of parties interested is injurious; in the second place, not only tribunals lose sight of the principles of decision, as the great object which they are to keep before them, but they are led to indulge a disposition to abridge oral argument.

There are states, within my own knowledge, where judges have exhibited marked anxiety to have suitors submit their causes upon printed briefs only; and as to such judges, the truth is, as suggested by Mr. Shirley, that they have not time to read the papers when so submitted.

The consequence of this is that when the case comes to be considered by the court, no oral argument has been heard, and often the printed brief is not read. Thus it has come to pass that many courts have forgotten that the profession of advocacy exists in order that parties drawn into litigation may be heard in court through their counsel. For my part, I shall be very glad to have Mr. Shirley's paper printed, and our Secretary should take the liberty of sending it with marked passages to the chief justice of every state in this Union. There is one notable exception in this respect; that is, the Supreme Court of the United States. Notwithstanding that the court is overburdened; notwithstanding that it is constantly pressed by the popular sentiment of the country, it is to the honor of that court that it listens patiently, that it disposes of causes with deliberation, and that it takes the responsibility of a long time to consider the causes, after a hearing in which full and patient consideration is given to the arguments of counsel. Who that has stood in that presence can ever forget the gracious and benignant patience of hearing exhibited by such judges as Taney and Nelson and Curtis, and others who might be named!—that patience of hearing which Lord Bacon commends as among the highest qualities of a good judge.

This is a subject to be emphasized by this Association. I can see but one issue of this over-burdening of the dockets of states: these periodical obstructions must be relieved by the establishment of temporary commissions. Then there is a problem in respect to constituted tribunals, such as the Supreme Court of the United States, which cannot be disposed of upon any hasty consideration. I conclude as I began, by saying that that portion of the address of Mr. Shirley ought to receive the hearty appreciation of this Association.

In reference to the paper read by Robert G. Street, of Texas, on "How far Considerations of Public Policy may enter into Judicial Decisions,"

Charles C. Bonney, of Illinois, said:

Believing, as I do, that the doctrine of Judicial Supremacy is the rock on which constitutional government rests, a sense of duty constrains me to protest against any attempt, in a body of which I am a member, to impair that foundation-stone of the superb superstructure that rests upon it. Let me therefore devote the few moments allowed by the rules of the Association, to an examination of the nature and extent of the judicial power, and of what I conceive to be the fundamental error of the learned essayist's position. It is one of the charms of our profession that we are trained to distinguish between men and principles, and with only the kindest feelings towards the man, wage the most vigorous opposition to the measure he supports. I, therefore, with great pleasure, pay the tribute of my admiration for the learning and ability displayed in the paper under consideration, while I dissent *in toto* from the conclusions reached.

I think we will all agree that the application of the law to a state of facts, for the determination of a controversy, is a

pure judicial function: and that it is indispensable to the proper exercise of that function, that the court shall examine the law, and also the contract, if the proceeding rest upon an agreement, in order to ascertain and declare their meaning. Hence the construction and interpretation of laws and documents, and the definition of their terms and meaning, is strictly and wholly within the judicial province, and inheres in the very nature of the judicial power. Let us now take another step. All the judicial powers are granted to, and wholly vested in the one Supreme Court, and such courts inferior thereto as the Congress may establish. No such powers are reserved, no exception is made; hence we must conclude that no power of final construction, interpretation, and definition has been given to the executive and legislative departments. That power, so wholly conferred upon the judiciary, must be exercised by them for all departments and agencies of the government. Executive and political officers may, in the first instance—and, indeed, must—form opinions of their powers and duties in relation to the matters upon which they are called to act; but they have no jurisdiction and authority finally to determine the extent and limits of their powers under the Constitution. The supreme and final authority so to decide is vested in the courts, and, when exercised, binds all the agencies of the government. The President and Congress are bound by their official oaths to support and uphold the Constitution of the United States. What that Constitution requires can be conclusively determined only by the judicial tribunals. If this were not the law, we should have the strange spectacle of the purse and the sword determining for themselves the extent of their obligations and their powers. What patriotic executive or legislator would wish it so? Who would not rather desire to have some disinterested and impartial arbiter discharge that solemn responsibility?

/

The theory of co-ordinate departments of government is well enough in its proper place; but it gives no just warrant for the claim that any department can properly exercise any power committed to another—which is the precise point under discussion—the exposition of the Constitution and of statutes enacted under it being judicial in its very nature, and granted, with all other judicial powers, to the courts by the express terms of the Constitution.

But, for greater certainty, let us inquire what is the nature of legislative authority. It did not create human society, nor did it make the fundamental rules of jurisprudence. Both existed before the legislative department of government was organized. Few of the rules that regulate human conduct were framed by the legislative hands. The great body of them were evolved from the experience of mankind, in the progress and development of civilization. Some have been added, and many modified by legislative enactment.

The exercise of pure political power is the chief duty of legislative bodies. This includes municipal corporations, elections, revenues, and appropriations. But they have also the power to establish new rules for future cases. They have not the authority to declare what the law *is*. That is a judicial function. We are apt to forget how small a part of the whole body of existing law we owe to legislation. Let a single illustration suffice. I heard a learned judge say of his court, that if the legislature should repeal every statute regulating its proceedings, he could nevertheless go on, under the constitutional grant of jurisdiction and the practice of the common law, and administer complete justice in all cases within the grant of the Constitution.

Deriving our jurisprudence largely from the mother country, we sometimes overlook differences which are fundamental. The doctrine of parliamentary omnipotence is radically different from the American principle of separate and distinct

departments of power. The British Parliament may, it is claimed, change the succession of the crown, and by its House of Lords it exercises the judicial authority of last resort. But under the American system, the legislative, executive, and judicial departments of power are separated by fixed and permanent barriers, that cannot be passed without usurpation. The American Constitution is a new thing in practical government. Its unity and integrity are maintained by the judicial supremacy it creates, and cannot otherwise be perpetuated.

We are apt to overlook the inherent powers of the judiciary, and to forget that "the court of equity is a fountain of remedies;" and that while it has no authority to create new rights, it has jurisdiction to recognize and enforce all that are regarded as such, and, in language ancient and eloquent, "will not suffer a right to be without a remedy."

The fundamental principle of our government is that the people, by their constituted agencies, may make what constitutions and laws they will; but that, having made them, the people must obey them while they stand. *Thus the law is sovereign.* No majority may rightfully disregard it. A child may invoke its protection against a multitude. The liberty of constitutional government is not the liberty to obey or disobey the laws according to personal or official pleasure or opinion; but it is the freedom to participate in making them; to act within the established limits; to change them in legitimate ways; and to enjoy the exercise of thought and conscience, unrestrained by human authority.

Two radically different views of the judicial department of the government are presented. One regards the courts as created to settle controversies between individuals, and as practically excluded from participation in public affairs; the other deems the establishment of a supreme judicial authority, exalted above the control of political agencies, as the

crowning excellence of our system, without which it could not long endure, but with which it may contemplate the coming centuries without fear.

It is rather to the natural growth and development of jurisprudence, than to the legislative authority, that we should look for the new rules that new emergencies may require. The doctrine of judicial evolution is fundamental to the common law, as well as firmly established by modern decision. It is one of the boasted excellencies of the common law, that it adapts itself by needful changes and enlargements to new conditions as they arise; and I do not hesitate to declare that it is the fault of the courts, if needless technicalities are retained after the reason for which they were invented has ceased to exist. The doctrine of judicial evolution is clearly recognized by the Supreme Court of the United States, in holding that the power "to regulate commerce" extends to the telegraph and other agencies not dreamed of when the Constitution was formed. The learned essayist referred to Jefferson's dogma that words are to be understood in the sense they bore when they were used. But thus stated, this rule is a heresy, as well as a dogma, for it states but half a truth. The Constitution was made, not for the present, but for all the future, whether near or remote. If the illustrious men who formed it had been asked the question, they would have declared with one voice that they were building for a great posterity, and that the words they used were intended to expand with the growth and development of the country, and to meet new conditions and emergencies as they might occur. This is judicial evolution. Amendments to the Constitution, and new statutes have, indeed, been required, to repeal provisions no longer needed, and to confer new rights and privileges. Such improvements are within the legislative domain; for, as I have already said, the courts have no power to confer new rights and privileges.

Their authority is limited to the protection and enforcement of such as exist.

We have listened to severe censures of judge-made law and judicial legislation. What is the meaning of these terms? Judge-made law consists of judicial expositions of the various doctrines of jurisprudence as found in, and illustrated by adjudged cases. Of this there is fortunately very much. Judicial legislation consists of arbitrary rules, not existing in the nature of the relations involved, but asserted and applied by the court without warrant of principle or of law. Of this there is fortunately very little. Of judge-made law, the text-books on commercial law, the law of contracts, the law of common carriers, the law of evidence, and, without enumerating other branches, the jurisprudence, pleadings, and practice of equity, largely consist. We owe little in all these departments to legislative enactment. They are the result of the evolution and development of the law under judicial exposition. This is even more true of constitutional law. The human intellect has never reared a nobler edifice than the American system of constitutional jurisprudence. It has risen under the hands of its master-builders, with a harmony, strength, and beauty as fascinating to the lawyer and the judge as is the matchless Cathedral of Milan to the eye of an architect or a poet. But other subjects press for time and hearing, and I must close. If I have spoken earnestly, it is because my words have come from my heart, and because I believe that the question to which I speak is vital to the best interests of this country. I close with a repetition of the noble tribute of the President's Address to that greatest expounder of the Constitution, John Marshall. We cannot match his judicial expositions of the great powers of government, by any chapter of legislative achievement. The only legislative act worthy to stand in "fame's proud temple" side by side with those expositions, is the famous

ordinance of 1789. Distinguished by a far-reaching and almost superhuman sagacity, that act of legislation deserves to rank with the Declaration of Independence and the national Constitution.

For the reasons thus briefly given, I must dissent from the argument of our learned brother, that the legislative and executive departments of the government have the right to determine for themselves the extent of their powers and duties under the Constitution, and must hold that those departments are, and of right ought to be, bound and concluded by the judgments of the judiciary on all questions of constitutional authority.

Let us encourage, rather than retard, the work of judicial evolution. Let us acknowledge and honor, rather than deery and seek to remove, that golden crown of constitutional government, JUDICIAL SUPREMACY.

E. F. Bullard, of New York, said:

To-day we have upon our statute-books in this state, a law which allows a man worth a million dollars in personal property, at his death, to deprive his family, by will, of every dollar; and there is no power in the courts to compel his estate to support the widow, except for a paltry sum of a few thousand dollars. Great reforms, such as are here needed, are only made by the people. Our written constitutions restrain the legislative power within certain limits, and to that extent the legislature is bound. If they transcend those limits, of course the Supreme Court of the state or of the United States, passing upon those acts, properly and legally nullify them. Therefore it seems to me both parties are in one sense right, and yet both parties wrong. I cannot admit but that the courts must necessarily become evolutionized to some extent. They must follow the will of the people, so far as requires their construction to follow public senti-

ment. The Circuit Court of course makes its final decision and nullifies a law. We cannot help ourselves except by revolution or impeachment, and that court may go so far in sustaining monopolies and corporations as to call upon its head the anger of the people through its representatives in Congress. In the case of Kilbourn, where Congress claimed to have the right to examine him for the purpose of burrowing out corruption, by a unanimous vote, he was imprisoned for refusing to act as that body had directed; yet the Supreme Court, by a majority vote, decided that Congress had no power to imprison a man for refusing to speak and unfold corruption. If Congress had asserted its dignity, it would have said to the Supreme Court, "We are supreme on that question," and the Supreme Court would have had to yield.

N. W. Ladd, of Massachusetts:

Mr. President,—It is not alone through the legislative branch of the government that the people are able to express their will. They can also speak through the Constitution of the United States and the constitutions of the several states. There are those two ways in which they can make themselves heard, and in which they can have a voice in the conduct of their government. Therefore it is true that the people are supreme. All the forms of government, all the departments of the government, are subject to their control. I agree in the main with the gentleman from Illinois on this question. It is true that the courts are to interpret the law; they are to interpret the Constitution; they are to say what the law really is; but they are in no sense to make the law. And it is true that we should go to the discussion in the enacting of any law or the adoption of any constitutional provision which the courts are called upon to interpret, to find out what was really

intended. I do not understand the gentleman from Illinois as controverting that position in the least. He distinctly said that if the founders of our Constitution had been asked whether they wanted to institute a system which should govern a growing country, or to introduce a system which should be narrow and contracted, they would unanimously decide for the former.

And, Mr. President, it is one of the rules of interpretation well known to all courts of justice, that the purpose of the instrument which is being construed is not to be forgotten. We are to consider that purpose, and I take it upon myself to say that that is one of the most important rules of interpretation, and one which, I think, may well govern all other rules of interpretation. What was the purpose of that instrument which was in the minds of the framers of our Constitution, and which is in the mind of the framer of every constitution throughout our country, and in the minds of the members of every convention which is called to make amendments to those constitutions? The thing that is in their minds is, What shall be the future of this country and of the state for which they are legislating? And that is the rule, it seems to me, which is to prevail in the interpretation of our Constitution; and that, as I understand the gentleman from Illinois, is his meaning. They were legislating for this broad country, destined to be filled by millions of people, and I trust that they had minds which were capable of comprehending that situation.

Robert G. Street, of Texas:

The gentleman from Illinois has entered his "protest" against the views presented in the thesis I had the honor to submit yesterday; and, while not proposing myself, unless there should be further occasion, to engage in ex-

tended argument to sustain those views, I wish to return my sincere thanks for the fair and kindly spirit which distinguished his remarks. It shows upon his part an appreciation of the spirit in which the article was framed: one of philosophical inquiry after the truth of a great question. The first sentence of the gentleman indicates the fundamental difference that exists between our views. It was, "My belief in judicial supremacy constrains me to protest against the views," etc. In response to that—and these two expressions will outline all the difference that exists between us—I say that my belief in the co-ordination of the three departments, the executive, legislative, and judicial—that they are equal and independent of each other—constrains me to the views expressed in the paper I have read.

We each, no doubt, enjoy the felicity of believing that our respective views are those which, under the Constitution, will best "promote the general welfare and secure the blessings of liberty to ourselves and our posterity."

It seems to me, Mr. President, that while the gentleman has eloquently dwelt upon the evolution of the law as productive of all that is beneficial in it, that it is to my side of this discussion that that argument belongs. I have proposed, sir, an argument against building up, by judicial decision, a Chinese wall against the progress of this country in the development of the science of republican government. It is I who say that the constitutional power of Congress, in the selection of "appropriate means" to carry out vested powers, is elastic and expansive, and that the interpretation that is placed upon what constitutes "appropriate means" by a single department of the government—and that the one which, from the nature of the question, knows less about it than either of the others—ought not to preclude us, but that this power should be subject to those

methods of construction which alone would enable us to adapt its exercise to changed conditions and circumstances. And this I understand to be evolution, if not in law, in political science. It is the very basis of my argument. I think the paper will serve, perhaps, some useful purpose, and the views of the gentleman will appear in juxtaposition with my own. The article is not submitted as an elaborate exposition, but as a suggestion, fortified by some authority and some reason, and because I thought that these were things that ought not to be allowed to perish in the land.

Edward Otis Hinkley, of Maryland:

I will add a word or two to what Mr. Street has said in defense of the general principles that I understood to have been advocated in his paper. When Roger B. Taney, in the city of Baltimore, tried the *habeas corpus* case of Merryman, and sent to the marshal at Fort McHenry to have the man before him, that justice might be done by the judiciary, the marshal returned for answer that he was prevented by the military force of the United States government from bringing him into court. Thereupon Taney delivered his opinion,* which is in print, and I will say nothing about it, but I remember to have heard his remark: "I will report the matter to the President." We all know that the writ of *habeas corpus* was suspended by the executive. In the opinion of Taney, it was the legislative department that had the exclusive power to suspend the operation of that writ. In times of war, the laws are silent.

It is impossible to tell what a man of power and determination will do in a case which he deems a case of necessity. What Andrew Jackson would have done under certain emer-

* See *Hurd on Habeas Corpus*, 2d ed., 119; 9 *American Law Reg.* 705.

gencies, he gave very vigorous evidences of. What other men have done in the office of President, we have seen. Our history shows it. The executive, then, will sometimes override the judiciary. Why? Because of some necessity which is apparent. Now let us turn to one of the principles of the common law. If a man goes out of the beaten road upon another man's land adjoining, without necessity, it is a trespass; but if the road is so obstructed that he cannot go upon it, he may have a way of necessity around it; the trespass is permitted as of necessity. If a man's house is burning, and there is danger that the conflagration may extend beyond his own property, certain necessities of the fire department allow them to go in and tear the house down. There are extraordinary occasions which justify the executive power in overriding all law. Now, lawyer though I be, and disposed to deprecate all that sort of thing, I once took hold of a man, by request of his mother, and prevented him from killing himself. Was that a trespass? Could I be sued for trespass against the person? I think not. Any jury would have acquitted me. That is the principle which is involved so far as the executive is concerned. Now, so far as the judiciary is concerned, they are bound to say whether the legislature has done right or wrong. Then the legislature are bound to obey, if they can see and understand it. But in a conflict between the judiciary and the legislative department, there is no appeal except, as Thomas Jefferson said, "to the people." And that is the ultimate appeal whenever the three departments are arrayed against each other. The truth is, there must be some balancing, some giving and yielding. In the friendship of two men, we will find that there must be a little accommodation between them, so as to avoid trespassing upon questions that are too difficult or delicate. It has been said that the quarrels of lovers are the renewals of love. Well, then, there must be some attempt. How can you find the

strength of a rope until you ascertain by certain ways how much strain it will bear? So the strength of an organization depends upon such questions as that. The question comes back again as to which of the three is right, and the question is one of impossibility of solution, just as is that peculiar problem in mathematics, What is the result when an irresistible force comes in contact with an immovable body? The consequences are, it is said, inevitable. You come down to the people, and they will answer you the question which is right. The truth is, that there are two great principles governing us all, and if we have regard to them, they will ultimately solve them. The good of the people is the supreme law. Then the question is whether, the heart being right, the head is right. We want integrity and ability. Very well. Now, you may use any amount of force or expression of will, and it will not accomplish anything until the man's reason is attacked; and then he will quietly submit, as he will to an axiom in mathematics. When the result comes, and it is done in a regular, orderly, reasonable method, then we stand and submit. I therefore agree with the gentleman from Texas, that there are some occasions when the conflicts between the three great departments are not to be solved in any other way than that each one must do what it thinks right; then if they disagree, the people will settle their quarrel.

Stevenson Burke, of Ohio:

Mr. President,—I quite agree with the gentleman from Illinois, and I disagree entirely with the proposition here advocated by some gentlemen, that each department of our government may construe the Constitution conclusively for itself. In my judgment, a careful reading of the Constitution will make the matter in dispute very plain.

We should bear in mind that governments existed long before our Constitution. Courts, legislatures, and execu-

tives all preceded it. The framers of the Constitution, recognizing the three great departments of government—the executive, legislative, and judicial—provided in the Constitution that the executive power should be vested in a president; that the judicial power should be vested in one Supreme Court and in such inferior courts as Congress should from time to time establish; and that the legislative power should be vested in a Senate and House of Representatives.

The people, in adopting the Constitution as the supreme law of the land, did not undertake to create any new powers; they simply provided where each power should reside. Now, let me ask you, as lawyers, what, in all times past, constituted the legislative power? Was it anything else except the power to make laws? In countries not governed by a constitution, the legislative power undoubtedly is supreme; in countries like ours, governed by a constitution, which is the supreme law of the land, the legislative power is unquestionably limited by the constitution.

The Constitution provides that the judicial power shall be vested in one Supreme Court, etc. What is the judicial power of any country—of any constitutional government? Can there be any doubt that it involves the power to ascertain and determine not only the rights of parties in any given case properly brought before it, but that it has also the power in any case involving the constitutionality of any law, to decide the question of its constitutionality? Can there be any doubt that the judiciary under our Constitution has the lawful authority to say whether a law enacted by the legislature conflicts with that Constitution? The people established the Constitution, and declared that it should be the supreme law of the land. The courts are sworn to support the Constitution; and if an act of the legislature is found to conflict with the Constitution, can

there be anything clearer than that it is the duty of the court so to declare? The people established, by the Constitution, the different departments of government, and divided and limited their powers; and, in my judgment, the Constitution thus adopted, conferred upon the courts the power, in any case properly brought before it, to determine whether any particular enactment of the legislature is or is not constitutional. This power, in my judgment, inheres in the courts from the very nature of the powers that are to be exercised by the courts. It belongs to our courts, not because it is a new power, but because the judicial power under our Constitution establishes the courts therein provided for, especially the Supreme Court, as the final and ultimate tribunal to determine what is and what is not in accordance with the Constitution.

I rise to make these observations, as I do not like to have it go out to the world as the opinion of this distinguished body, that each department of our government has the same power to judge for itself of the constitutionality of a statute. In my judgment, each of the departments of the government, within the powers conferred upon it, is supreme; that is, the legislature has the sole power to make a law, the executive power to execute it, but the courts established by the Constitution are of necessity the final arbiters as to whether, in any given case, either the legislative or executive departments have transcended the limits of the Constitution.

Charles S. Bradley, of Rhode Island:

After listening to the gentleman from Ohio, it seems to me that I need only say, "Ditto to Mr. Burke." And yet I may add a word of concurrence. This Association will, I trust, always be liberal to the last degree to all declarations of new opinions and hopes. We shall welcome the light on

the mountain tops, of the coming day. There are those whose thought is direct and rapid like the cannon ball. Others prefer the river's course, the valley's windings, the road on which blessings come and go, if I may quote a poet, one of whose blood and lineage is now landing on our shores—the Lord Chief Justice of England.

While the thoughts of our younger brethren shall be placed upon the records and sent forth to the country, it is due to this Association, it is due to the bar of the country, when such thoughts are thus given to the world, that with them shall go the doubts, the dissent, it may be, of the seniors of the bar, those who live in the valleys or on the plains. We must be permitted at least to say that we do not understand you, young men, and cannot therefore agree with you.

The paper before the Association seems to present the idea that in our American system of government there are three branches, each co-equal in authority, in right, and in power. If one branch declares any right, another branch may deny the existence of that right, and each branch rightfully act upon its own convictions and declarations. The executive department may affirm a right and act upon it; the legislative department may affirm a right and embody it in law; the judiciary may deny either proposition; and the opinion of neither shall control the action of the other. Such is the result of the proposition.

Now, government is essentially a practical matter. Let us look at the theory advanced, from a practical point of view. To take an illustration which occurs to me, Congress once passed a law taxing the salaries of state judges. The Supreme Court declared such law to be unconstitutional and void. Now, should the officers of the executive collect this tax, and the marshal of the United States court protect the incumbent of the state office from such collection? Can

the officers of one and the same government be engaged in such a direct conflict of duties? What would become of the highest officer, it may be, of a state court between such antagonisms? One department certainly must yield to the other. They cannot be co-equal practically, and remain a government. Chaos would reign.

The common sense of the American people has acted upon the idea that, in such cases, the judicial is paramount to the executive or the legislative department. It is such common sense in the affairs of government which has carried us through a hundred years of successful experiment—through even the Niagara of civil war. By this common sense we now float tranquilly on the waters of Ontario, as before on those of the upper lakes. By it we shall go through rapids without danger, to the ocean of the future.

Co-ordinate, indeed, are the branches of government; they cannot be co-equal at the same time and place. Such human creations must be like those creations of God above us and around us, whose movements are the harmony of the universe, each in its sphere, each obedient and sovereign by turns, and never in collision.

We have instanced one case of many in which the judicial power must be supreme. There is a large class of cases in which the legislative department is supreme over the judicial. The able writer of the thesis, representing with such interest to us all the really empire state, whose emblem is still the lone star, will permit me to refer to an instance illustrating this doctrine in the history of the smallest state, save one, in the Union—a history, I may be permitted to say, which has been so instructive in matters civil and religious, that one of her sons happily compared her to the statue of the Greek sculptor which, though but a cubit in height, gave a better idea of vigor than the Colossus. In this

comparison I certainly do not mean to say that Texas is the Colossus.

It happened in the history of this little state that two governments claimed the allegiance of its citizens. The government *de facto* placed on trial before its courts Thomas Wilson Dorr, claiming to be governor *de jure*. The prisoner at the bar offered evidence of certain facts, claiming that they in law constituted him the governor of the state, with the right to commit the acts for which he was arraigned.

The court held that such inquiries were not cognizable by it. The decision of such questions was vested in the political department of the government. The court would not revise or reverse the action of the political department in this regard. It was its duty simply to follow and obey; any other course would be a usurpation. Such was the doctrine of the supreme court of that state, propounded in such terms by its philosophic chief justice, that Mr. Webster embodied them in full in his argument of the case, *Luther vs. Borden*—an argument preserved for posterity in the last precious volume of his works, dedicated by him to the memory of his beloved daughter and of his youngest son, who gave his life to his country in the war with Mexico. The Supreme Court of the United States, composed principally of judges of a different school of political thought from Mr. Webster, without dissent sustained the doctrine; and it has recently been acted upon by that tribunal in a case arising upon the reconstructed constitution of Georgia.

There is a class of cases in which the danger apprehended by the author of the paper exists. It is those in which the court is called upon to give opinions to the other branches of the government. Such opinions are not in the exercise of its judicial functions. They are not opinions given after listening to antagonistic discussions. What constitutes the worth of judicial decisions, what makes them in experience

the just and safe basis upon which society rests, is not only that the court fulfills its oath of office in judging uprightly and impartially, but also that it speaks judicially only after it has been instructed by argument upon different sides of the question before it. No other opinions from it have the force, the weight, or the wisdom of law. To attempt thus to introduce the personal opinions of the judges into our system of government, is to give them an unnatural, a dangerous potency.

There is another class of cases in which the judicial and the political branches of the government have approached collision: those in which constitutional changes have been attempted either through the provisions for amendment contained in existing constitutions, or through conventions assembled with the consent of the existing government.

The most remarkable instance, perhaps, which has occurred, is that of Pennsylvania. When the last convention was held in that state, the court judicially declared that the mode of submitting the proposed constitution to the people must be that pointed out in the law providing for a convention. The convention almost unanimously protested against this decision of the court, but prudently yielded to its directions.

Such questions must be considered yet in abeyance. And so of others in which the courts—notably recently in Iowa—have held that the mode and the particulars through which an amendment pursuant to the Constitution can be made, must be strictly complied with, or the amendment, though proposed by the legislature and adopted by the people, is void.

It may well be a subject of consideration whether, in such action, the judicial has not encroached on the political department, or assumed a power over the sovereign—the people themselves.

In no government in the world has such power been vested in the judicial department as in ours. It is, like all power, especially when new and untried, liable to abuse. It has been abused.

It is also true that the decision of a court does not close discussion, even in that forum. Witness the jurisdiction over corporations, and the admiralty jurisdiction of the United States courts, and the decisions on the legal tender acts.

Still less does a judicial decision close discussion in the legislative bodies and before the people. The judiciary is like a dam, which holds back public action for a time, but for a time only. The great current of human life and thought is paramount to it, and must sooner or later have its course.

With these and such concessions to the thought of the writer, we must still maintain that rightfully at times, and often, the judicial department is supreme.

George A. Mercer, of Georgia:

I wish to impart a piece of information. The question discussed by the gentleman from Texas is interesting, as this discussion has proved, and the present constitution of Georgia very happily cuts the knot. It has a clause which provides that every law passed by the legislature not in conformity with the supreme law, is null and void, and the judiciary shall so declare. So that in the state of Georgia there can be no question at all as to the power of the judiciary to declare a law void. Still, Mr. President, the question elicited by the essay of the gentleman from Texas is a very interesting one to us. For example, if a law were passed by a legislative body, and a supreme tribunal decided that that law was unconstitutional; if that same law should go before the Executive for interpretation, would he bound to say that it

was void because the Supreme Court had so declared? I think not. He would be under a moral obligation to say the opposite. It seems to me that the question is properly summed up in what Judge Bradley says. If the law were vetoed because the court said so, then the illustration given by the essayist last night could not follow. Take the Legal Tender Act. The Supreme Court decided that that act was void. The act continued in operation. The Supreme Court subsequently decided that that act was not void. If the act was annulled completely, and destroyed by the first decision, then the second decision could not have acted upon it. It seems to me that the question can be very well illustrated by a famous Irish bull. Two Irishmen were standing beside a well. One fell in. The other looked down in the well and called, "Patrick, are ye dead?" "No," said Patrick, "I'm not dead, but I'm speechless!" Now, the law may not be dead, but practically it is so.

Emory A. Storrs, of Illinois:

When I came into this hall I was attracted by some observations upon what, it seems to me, is a present and very serious fault in our judicial administration; and if I were to characterize it by a phrase, I would call it "judicial hurry." There is a growing tendency, particularly in large cities, to introduce in the administration of justice the questionable methods of the stock board and the produce exchange. I am opposed to that kind of hurry, and I am in favor of any address (and I understand that a very able one has been read before this Association) which aims to prevent such practices. I admire our profession; I honor and respect the bench; but I should honor and respect it much less than I now do if that honor and that respect was a mere fetish worship of the bench because of its position. I cannot but remember that all the judges have been

lawyers, and most judges again become lawyers. I cannot but remember that throughout this country there are a great many judges who would be highly complimented by the suggestion that they were or had been lawyers. I do not believe in hurry, for I think nothing is secured by it. Nothing is gained by doing a great deal of injustice in a few minutes, and no time is too long which is appropriated to the correct decision of a case. The most admirable judicial tribunal, I take it, that we have in this country is the Supreme Court of the United States.

This leads me to the topic I have suggested—the fetish worship of the bench. The bench has not made as many things as we sometimes think. It is not a creator; it ought not to be. Lord Mansfield did not make the law merchant; the merchants made it before he did. Just what this system of equity jurisprudence is in this country, I hardly understand. It is a curious piece of mosaic, and in this state I believe there is no Equity under that name. Without going very deeply into this subject of the origin of the social system, nor trenching at all upon these vexed questions which grow out of the different relations of our government, I think there are practical questions, every day presenting themselves to lawyers, which I know we have to meet, and which I know the bench will have to meet. I am more or less suspicious of metaphysical terms imported into our profession. I do not know quite what is meant by “judicial evolution” or “judicial development.” It is a sort of legal protoplasm with which I am not familiar. Judicial legislation—and with all my approbation of the bench throughout the country, there is a great deal of it—is, in my mind, much worse than legislative legislation. I do not believe that we ought to try to venerate that practice by the convenient phrases of “judicial evolution” or “judicial development.” Of course, the common law is wonderfully

growing and elastic. Had we not better, on these tremendous questions, such as are constantly presenting themselves, growing out of the disturbed relations between corporations and the public interests, take the situation exactly as we find it, and admit that, in the common law of which Coke and Bacon wrote, there was nothing really adequate to reach the questions which we are every day compelled to confront, and which, in one way or another, the courts are called upon to decide? I believe in this division of power, and, believing in that, I am quite as reluctant and averse to a judge legislating as I am to a legislator adjudicating. It is a little hard to tell on which side of the line the balance of the danger lies. Let us, as lawyers, also remember another thing. Our profession is an old and long one, and we cannot quite judge judges by any little period of a generation or of a century. Take the whole history of civil liberty in this country and in Great Britain together; the lawyers have done a great deal for its advancement, and in the main the judges but very little. I think it may be said with absolute truthfulness that, taking the whole history of the common law together, and of the judges under that system, the judges have inflicted more serious injuries upon civil liberty than generals. The judges never gave us the liberty of the press, or of speech, or of the pen. The lawyers did fight for it, and in the main it was lawyers, aided by legislators, who secured it. It has been so in the history of this world with all these great questions. Gentlemen, it is going to be so in the history of our own country, and in our own immediate time. It seems to me hardly necessary to theorize or philosophize much about it. The Dartmouth College case is practically reversed. I express no opinion as to whether it ought to have been or not, but the Dartmouth College case, with its declaration of vested rights, etc., and in the way in which it

was applied, became, upon this people, a burden so serious, that I think it was pretty clearly seen that there must be either a limitation, an explanation, or a qualification of the Dartmouth College case, or a revolution. It is not fair, therefore, to say that the Dartmouth College case has not been qualified. It has. It is well enough to say that the decisions of the Supreme Court are absolute law, without intending to urge any political considerations whatsoever.

The Dred Scott case was reversed. Who reversed it? Decisions have been reversed again and again. No theories of evolution can draw us away from those facts. We, as lawyers, stand upon the threshold of an important era. We cannot, by any theories that we have now, or may invent, change the stride of these great affairs. In those mighty questions, partly political and partly professional, the people of this country are going to have their way, and I think it would be well for us, seeing in advance that they are determined to have their way, to take pains and get into line, and let their way be our way also.

The President :

If this discussion is not to be prolonged, the Chair is prepared for any other business that may be introduced before the adjournment of the morning session.

C. C. Bonney, of Illinois :

Mr. President,—I rise to move—and, in case my motion shall be seconded, to ask that it lie on the table—that the next meeting of this Association be held in the city of Chicago.

The President :

There being no objection, the motion will be received, and lie on the table without action.

Emory A. Storrs, of Illinois:

I rise to announce the death of a distinguished gentleman, the Hon. Thomas Hoyne, of Chicago, a member of this Association.

The Secretary:

Appropriate action will be taken upon Mr. Hoyne's death, and an obituary notice will be printed in the record of our proceedings.

William Allen Butler, of New York:

I ask leave to present, very briefly and verbally, the report of the Committee on Jurisprudence and Law Reform. The committee was directed by the Association at its last meeting to take suitable action with reference to the presentation to the different state legislatures of the act relating to acknowledgments of instruments affecting the title to real estate, and to prevent fraudulent divorces. The committee, pursuant to that direction, have caused these acts to be presented to the different state legislatures. Owing to the fact, of which the Association is well aware, that in many of the states, sessions of the legislatures are only held once in two years or three, many of the legislatures have not acted upon these proposed statutes. The state of Minnesota has passed the act in relation to fraudulent divorce. Missouri has passed the act relating to the acknowledgment of deeds relating to real estate. These acts are pending before all the state legislatures. We are therefore able thus briefly to report progress upon this matter, and I particularly desire, on behalf of the committee, to suggest to members of the Association present, that if any of them can aid us in any way in furthering the passage of these acts, we should be very thankful, and the Association will recognize the value of such assistance and service. The reports we have received are all favorable

in respect to the act regarding acknowledgments. If there are any gentlemen present who can communicate with the committee, and can aid us in furthering the passage of these statutes in their respective states, we shall be very much obliged to them if they will communicate with us.

On motion, the meeting then adjourned.

Evening Session, August 23, 1883.

The President :

I take this occasion to announce to the Association the reason why Governor Stevenson could not deliver his Address this morning. I have a telegram from him which I received on Monday evening. I did not make the announcement before, because I was in hopes the reply which I made to it would have brought the manuscript of his Address. This telegram says: "Sick, and quite a sufferer. Sadly disappointed at not reaching Saratoga. My Address was all prepared. Explain my absence." I telegraphed in reply, expressing great regret, and requesting him to send on the manuscript as promptly as possible. To that I have no reply, nor have I heard anything of the manuscript arriving. I had hoped that by this time it would have arrived, and therefore I delayed making this announcement until this hour.

Edward J. Phelps, of Vermont :

I desire to offer a resolution on the subject, you have just mentioned, which I think will probably command unanimous attention. It is as follows :

Resolved, That the Association have heard with deep and sincere regret of the illness of our honored associate and dear friend, the Hon. John W. Stevenson, which detains him from

this meeting, and deprives us of the pleasure of his promised Address.

Resolved, That the Secretary be requested to send a transcript of this resolution to Governor Stevenson, and ask of him a copy of his Address for publication.

Charles A. Peabody, of New York :

I desire, and it gives me great pleasure, to second that resolution, especially the sympathetic terms in which it speaks of Governor Stevenson. I left him a fortnight ago at the White Sulphur Springs, in his usual health, and full of promise. The old gentleman was much pleased with the prospect of being here and having the pleasure of addressing you, as he has had forebodings for some time past that his health was precarious. It is a little doubtful if I would have been here but for the pleasure of meeting and hearing him. No more genial man is embraced in our body, and no one who appreciates more fully the pleasing professional and social relations begotten and enjoyed here. I am very happy, sir, to second the resolution.

The resolutions were passed by a unanimous vote.

The President:

I beg leave to present to the Association now, Mr. Baldwin, of the Yale Law School, who will read a paper in accordance with the programme, to which I now ask your attention.

Mr. Baldwin then read a paper on the subject of "Preliminary Examinations in Criminal Proceedings," which will be found in the Appendix.

The Treasurer presented his Annual Report, with the certificate of the auditors appended. (*See infra.*)

John L. Thomas, of Missouri:

If it is in order, I will offer the following:

Resolved, That the Vice-Presidents of this Association be, and they are hereby requested to prepare and forward to the Chairman of the Executive Committee, on or before the first day of June, 1884, summaries of the judicial systems of their respective states, which the Executive Committee shall report to this Association at its Annual Meeting, with such suggestions and recommendations as it may deem proper to make.

Mr. President,—I take it that one of the chief objects of this Association is to take such measures as will tend towards uniformity in the judicial systems of the United States, though complete uniformity may never be reached. Much has been said about the multiplication of books of reports, and the constantly increasing labor of the lawyer and the judge to reach a just conclusion; but the multiplication of books of reports is not the only evil resulting from our present legal methods. Thirty-eight tribunals, differently constituted, though drawing their fundamental principles from the same sources, are building up thirty-eight diverse systems of law and judicial administration upon diverse statutes, so that to-day, in many instances, the opinions rendered are of no authority in any state except the one in which they are rendered; and in order to know whether a given opinion is authority, the lawyer and judge must not only study the cases in the same state *in pari materia*, and ascertain to what extent the doctrine laid down is tinged and colored by local customs and habits of thought, but they must also investigate the statutes which have probably controlled the judgment of a court whose very constitution and jurisdiction are a sealed book to them. All thoughtful jurists who have given this subject any consideration feel that the law is growing too large and complicated, and that if the present methods of legislation and judicial administration

be continued, we shall all be driven inevitably to specialties. In my view, therefore, this Association can accomplish more good by taking such measures and giving our discussion such direction, as will tend directly to *unify* our system of legislation and judicial administration in the several states; and, to the end that we may have the proper statistics upon which to act in the future, I have introduced this resolution calling upon the Vice-Presidents to give us the various judicial systems of our states. I hope the resolution will meet the approval of my brethren present, and will pass.

William Allen Butler, of New York:

It seems to me that this resolution should go to the Committee on Judicial Administration and Remedial Procedure, of which Mr. King, of Ohio, is Chairman. That committee is specially charged with the consideration of the subject embraced in the resolution, and I move to amend by having the required information given to that committee.

John L. Thomas, of Missouri:

I will accept that amendment.

The resolution as amended was adopted by a vote of 38 to 10.

Robert G. Street, of Texas:

Mr. President,—With the permission of Professor Baldwin, I would like to ask him a question or two with reference to the article which he has just read.

Simeon E. Baldwin, of Connecticut:

With great pleasure, sir.

Robert G. Street, of Texas:

In the first place, is it not embraced within one of the eleven amendments of the Constitution of the United States,

and is it not also a provision common to almost all the state constitutions, that the defendant, in all criminal prosecutions, shall have the right to be represented by counsel? and does not the term "prosecution" embrace all the proceedings after arrest, preliminary as well as final? I have understood you to say that you were willing to accept the constitutional provisions as they stand. That is the first question I wish to propound.

Second, with reference to the constitutional provision that the defendant shall not be required to testify against himself, or words equivalent thereto. If he is made a competent witness, and his failure or refusal to testify at the instance of the state is, as argued by yourself, to be considered by the jury as evidence against him, would it not in effect be to compel the defendant to give evidence against himself? In other words, would you not construe the constitutional provision last referred to, to read that the defendant shall not be compelled by physical force to testify against himself?

Simeon E. Baldwin, of Connecticut:

Of course, Mr. President, the views that I have suggested this evening have been put forward in the spirit of an advocate. I do not dispute that there is strong ground in favor of the position taken by the gentleman who has just taken his seat. The statutes passed by our states, which forbid the court and the counsel to comment to the jury upon the silence of the prisoner on his trial, were undoubtedly dictated in part by the belief in the legislature that this constitutional guarantee did impliedly require that such an immunity should be explicitly accorded to him; that no presumption should be drawn against him from his silence. But I contend and believe, sir, that a sound and intelligent construction of our state constitutions leads to a different conclusion—that we have gone too far—because a general sentiment of human-

itarianism has characterized both our legislation and our judicial practice. And as to the amendment to the national Constitution (made not, I think, in the eleventh Amendment, but in an earlier one, giving the defendant the right of counsel, I should differ from my friend in thinking that that referred to preliminary proceedings. It seems to me that that means counsel when he is upon his defense—when he is upon trial. It certainly does not mean that before the grand jury he is entitled to counsel. Why should it be strained to mean that he is entitled to counsel in the presence of the committing magistrate, and at the first stage of the proceedings, before a witness is called, or the charge itself is formulated? All this, I should say, remains a matter for legislation, unfettered by the constitutional provision to which reference has been made.

The President:

Is any further discussion of the paper which has been read desired, or any further business to bring before the Association this evening?

W. H. H. Russell, of New York:

On the day's programme there is a call for the report of special committees.

The President:

The Chair called for those, but there were not any committees ready to report. I should be happy to have them now, if there are any reports to be presented.

W. H. H. Russell, of New York:

There was an important matter laid upon the table by Mr. Vaux, of Philadelphia. We should like to know whether that is to be read.

Henry Reed, of Pennsylvania.

As a member from Pennsylvania, I desire to state that we do not wish to call that up until to-morrow.

The President :

That was laid upon the table, subject to Mr. Vaux's call. Of course it is also subject to the call of the Association.

I announce the appointment of Mr. Anthony Q. Keasbey, of New Jersey; Mr. Charles S. Bradley, of Rhode Island; Mr. Francis Rawle, of Pennsylvania; Mr. Andrew Allison, of Tennessee; and Mr. Daniel Roberts, of Vermont, as the Committee on Publications.

The meeting then adjourned.

Friday morning, August 24, 1883.

The meeting was called to order at 10.30 o'clock, by the President.

Wm. Allen Butler, of New York :

The Executive Committee are in receipt this morning of a telegram reading as follows:

"NEW YORK, August 24, 1883.

"Steamer Celtic below. Will arrive about 8 A. M."

This apprises the Association of the arrival in this country of Lord Chief Justice Coleridge. The Association referred to the Executive Committee a resolution in reference to this subject, and the committee have instructed me to report to the Association their action. Of course, the arrival of this distinguished guest of the New York State Bar Association to-day precludes the possibility of our securing, as was hoped at first, his presence here. The Executive Committee have agreed upon the minute which I now present :

"The Executive Committee, to which was referred the subject of the expected visit to this country of Lord Chief

Justice Coleridge, of England, and the action to be taken in reference thereto, having just received by telegraph the news of his arrival in New York by the steamer Celtic, present the following minute for the approval of the Association, to be placed on its record and to be immediately communicated by telegraphic message, signed by the President and Secretary :

“TO LORD COLERIDGE :

“The American Bar Association, convened in its Annual Meeting at Saratoga Springs, being advised by telegraph of the arrival this day in New York of Lord Chief Justice Coleridge, extends to him, on behalf of the entire Bar of the United States, federal and state, as here represented, a most respectful and cordial welcome, with the expression of the earnest wish that the interest taken by the American Bar in his visit to the United States, marked by their sincere esteem for his personal character and eminent professional and public services, as well as by their respect for his high office, may in some degree contribute to the pleasure and satisfaction which it is hoped may attend his sojourn in this country.”

I move the adoption of that minute, and that it be communicated by telegraph, signed by the President and Secretary of this Association.

The resolution was unanimously adopted.

NOTE.—An answer was afterwards received by telegram to the foregoing, which is as follows :

“TO A. R. LAWTON, Esq., *President*, and

“EDWARD OTIS HINKLEY, Esq., *Secretary*.

“The Lord Chief Justice of England desires to return his cordial thanks for the welcome which has been sent him. None could be more grateful to him in regard of the sentiments conveyed and of the body which conveys them.”

Judge Poland here read a list of new members approved by the Council. (*See List of Members Elected, at the end of the General Minutes.*)

The nomination of officers for the ensuing year was then read, and they were unanimously elected. (*See List of Officers at the end of the General Minutes.*)

The President:

The regular business, as provided for in the programme, having been disposed of, any other matters lying upon the table may now, upon motion of the parties who introduced them, be taken up; or any miscellaneous business may be called up.

C. C. Bonney, of Illinois:

Mr. President,—There are two or three matters in the way of miscellaneous business, to which I desire to call attention. First, suffer me to call up the resolution which I had the honor to introduce yesterday in relation to the next meeting of this Association in Chicago. I desire most especially to say that the proposition to meet in Chicago did not originate with me or any other Western man. The suggestion was made by an Eastern member of the Association, and nothing could be further from my desire than to have any constraint in the way of changing the place of meeting of this body. Nothing could be more delightful to Western members than to come to Saratoga. The only considerations that would make us willing rather than desirous to have a change, would be those relating to the general welfare of the Association. If the body should meet in Chicago next summer, it would undoubtedly come in a closer personal contact with the bench and bar of the northwestern states than would be possible under other circumstances. That the Association would be most welcome there, I may say with entire confidence. After the suggestion was made, I was authorized and requested by the manager of one of our leading daily papers—and I think I can speak with equal

confidence for the others—to say that if it should be the pleasure of the Association to meet in Chicago, he would give from one to two pages each day to the reports of the Association; and, being furnished with copy, would publish all the leading papers the next day after their delivery. That service has been rendered to other public bodies on various occasions. I feel warranted in saying also that under those circumstances the *Louisville Courier-Journal* and the Cincinnati and St. Louis newspapers would aid in spreading the influence of this body by publishing full accounts of our proceedings. The Palmer House will place at our disposal suitable rooms for the purposes of our meeting, free of charge; and a church, centrally located, is also offered for our meetings, at an expense estimated to cover the care and lighting of the house. So far as the climate of Chicago in midsummer is concerned, I assure you that it would not be found less cool and delightful than that which we enjoy here. Now, having said thus much, I shall forbear to enter into any eulogy of Chicago. As the greatest of all orators said of Massachusetts, I may say of her. Since her baptism of flame in 1871, all the world knows her history by heart; it needs no repetition here, and the Garden City requires no eulogium at my hands. What I desire is—and I am sure I speak the real sentiments of my brethren in the Northwest—that the bar in the great Northwest should have an opportunity to meet the distinguished gentlemen who have gathered here in Saratoga. Some of us can come here and share in the delights of these annual reunions, but to the great majority that is not practicable. But if you come to Chicago, let it be not by the votes of the Western men, but by the voluntary action of the entire Association. Nay, more than that, let it be by the hearty desire of the members of the Association who live in the Eastern states. I beg your pardon for having occupied so much time. I

- will not even move the adoption of the resolution. If it be moved, it must be by some other voice.

E. F. Bullard, of New York:

As a local representative of Saratoga, allow me to say that we shall not oppose at all the choice of this meeting, and will be pleased to meet our friends at Chicago. We feel flattered in having had the Association here for the last six years, but I wish to say, in addition, that so far as the question of expense is concerned, the Town Hall at this place would give us rooms without charge if it is desired to remain here. We have this year added a new Court of Appeals room to the building, and it will hold quite as many as this room. We have also a library belonging to the state, in the Town Hall, consisting of over ten thousand volumes, and I wish to say now to any member present, that it is open at all times of the day, and members will be cheerfully welcome to examine the library and use the books during their stay here. I merely make these statements as due to Saratoga, but we shall not oppose any desire of the Association, if thought best for its good, to go to Chicago.

Henry B. Brown, of Michigan:

- I am opposed to the proposed removal of our meetings to Chicago. God forbid that I should say anything against Chicago! I am willing to put myself upon record here as admitting that it is the finest, the wealthiest, the most populous city upon the face of the earth, but it is not the place for this Association, in my humble opinion as a Western man. What we should gain by an increased attendance of Western men, we should lose by the absence of a great many eminent men of the East. Chicago undoubtedly has many advantages for a convention of this kind, but as a summer residence it is not a delightful place, as I am informed; it is not the place in which lawyers from the Union

congregate as they do in Saratoga, which is recognized as the summer metropolis of the country. A great many persons come to this convention incidentally to their summer vacation, and it is very pleasant to come here to meet gentlemen of the bar from all of the states, and make their acquaintance. Indeed, I regard this as one of the chief objects of an Association of this kind. It seems to me that it must be apparent that Chicago, while it may in numbers draw as many as Saratoga, will not draw from the area that this place will for its attendance. I think it would be a mistake to change the location of this convention, and I therefore desire to say that, for one, I shall oppose this resolution.

John M. Gaut, of Tennessee:

A resolution was passed by the Tennessee Bar Association last year upon this subject, but owing to the absence of the Secretary of that Association, I was unable to have it here. The Association of Tennessee earnestly desires that the next meeting of this Association shall be held at some more central locality. They would suggest some one of the central states, without designating any particular one. My own ideas are that they would be better suited by a meeting in Virginia than elsewhere; but as there seems to be some difficulty in having the Association accommodated there, I am inclined to think Chicago would come nearer suiting their wishes than any other place that occurs to me. I would say further, Mr. President, that we lawyers of the South recognize our profession. We believe that it has more potency than any other in fixing the standard of public morality and business integrity; that it has more influence in commanding a respect for law and the powers of government. We understand that it has more to do in shaping the jurisprudence of the country and the machinery for the administration of its laws than any other. But we

do not believe in monopolies. We believe that he who advances the interest and increases the influence of the legal profession is his country's greatest benefactor, and in this great work we intend that the South shall have its due share. We intend that the newly awakened South—and, if you will permit me to say it, the young South—shall occupy a position in the front rank. Now, we think that a meeting of this Association in some place more accessible to Southern members will elicit their interest in the Association and its proceedings, and will have a benign influence upon them. For that reason we earnestly desire—or, at least, I, in speaking for my Association, would say that we earnestly desire—that the resolution presented by the gentleman from Illinois shall be adopted.

W. H. H. Russell, of New York :

I move the adoption of the resolution.

The motion was seconded.

Henry B. Brown, of Michigan :

I offer this amendment, that the word "Chicago" be stricken out, and "Saratoga" inserted.

The motion to amend was seconded.

A. Porter Morse, of the District of Columbia :

The effect of that amendment will be to suppress discussion on this subject, to which, it seems to me, members are entitled.

The President :

The amendment will not stop the discussion, in the opinion of the Chair.

Rufus King, of Ohio :

I move that the whole subject be referred to the Executive Committee.

Charles A. Peabody, of New York : I second that motion.

Edward Otis Hinkley, of Maryland:

As one of the members of the Executive Committee, I would like to say a word. Nothing is more important than for a man to know the will of his master, if he is disposed to obey and fulfill the duties of his function. The Executive Committee desire only to be your obedient servants. Last year, Mr. President, it must be recollected, a vote was had of 38 to 27 to go to Green Brier, White Sulphur Springs. Our only reason for not going there was because the proprietor of that establishment said that it was impossible to accommodate us. I think the gentleman from Illinois is right in one particular at least, that this Association should not go to the West by the particular desire of Western men, or by their votes, even if they had a majority and could control our action. It must be done by gentlemen from Eastern states, with the concurrence of the South. The question lies rather deeper than the matter of pleasing accommodations. It is whether the objects of this Association will be best promoted by staying here or going elsewhere. The last object named in the Constitution is to "promote cordial intercourse." With whom? With the members of the profession throughout the country. Now, I will go to the very lowest point at once—the money question. There are a good many members of the profession who have not the means to come here from a great distance. That, I submit, is a good argument. It is, to be sure, a low question to appeal to; but we must come down to the bottom plane in a good many of these questions. I think the register of the Association will show that members get tired of coming here year after year. Now, we must settle this question, and I suppose it ought to be settled at this meeting; but if not now, then it must be settled some day, whether we are to remain in Saratoga permanently or we are to move around. I should be perfectly willing to come to Saratoga every second year, and

to go to Chicago or to Atlanta, in Georgia, or elsewhere, in the odd years. As to climate and conveniences and other questions, of course those are secondary. We can meet five hundred men there instead of a hundred and fifty here. We can send an influence over about six or eight states of the West that will promote the objects of this Association. I think we should lay aside all personal considerations, and look only to the best interests of the Association in this matter. As one of the Executive Committee, I wish that this body, without avoiding the question, shall meet it fairly and distinctly, and give us their orders, and not refer it back to us. The distinct vote of the Association last year would have been obeyed by the committee if it could have been done, and whatever vote is taken this year, I think I may promise that we shall obey. Referring it to the Executive Committee means to stay in Saratoga. To amend the resolution by striking out the word "Chicago" and inserting "Saratoga" means the same thing. I beg leave to say that I think we ought to have the clear, distinct, unequivocal, expression of the Association itself in a matter of so grave importance.

Rufus King, of Ohio:

I would prefer to save what time we have left to-day for other matters, and I therefore suggest that the Executive Committee ascertain, by circular addressed to the members present, the sentiment of this body on this question.

C. C. Bonney, of Illinois:

If it is the pleasure of Mr. King to amend the motion in that way, I shall be most happy to accept.

Rufus King, of Ohio:

I move that the subject be referred back to the Executive Committee for the purpose of ascertaining, by a circular, what are the wishes of the Association.

W. H. H. Russell, of New York :

At the last Annual Meeting it was discussed and determined that the best interests of this Association would be promoted by a meeting at White Sulphur Springs. The only reason why it was not held there was, as stated by the Secretary, because of the lack of accommodations at this season of the year. Now, there are many reasons why the interests of the Association would be advanced if its meetings were held in Chicago. The Palmer House has tendered us its large hall. Its newspapers have offered to aid us by printing full reports of our meetings. At our last meeting, on page 17 of the Report, it will be found that Mr. Bullard, of New York, in urging some of the reasons for the increase of the interests and purposes of the Association, used this language: "If the Association could at all times succeed in getting about one hundred to one hundred and fifty or two hundred members to attend the annual sessions, that would be enough to carry on the business properly, while the great usefulness of the work of the Association would be promulgated by the publication of the annual reports." Now, the gentleman from Chicago states that the press of that city have tendered to the Association, through its columns, the publication of its proceedings. We all know that the press to-day throughout the United States gets only a very abbreviated telegraphic report of our proceedings. The local press do the best they can with the space they have. If the Chicago press publishes the proceedings of this Association, the purposes of this organization will be enhanced fifty-fold. I believe we shall have a larger attendance in Chicago than here, Mr. President, and I am in favor of the adoption of the resolution.

John M. Moore, of Arkansas :

It seems to me that this question properly belongs to the

Executive Committee, under the provisions of the Constitution, and that the only way to effect the object of the resolution is to change the Constitution. Article IX. of the Constitution reads as follows: "This Association shall meet annually in the month of July or August, at such time and place as the Executive Committee may select, and those present at such meeting shall constitute a quorum." Therefore the Constitution must be amended before this resolution can succeed.

Alexander Porter Morse, of the District of Columbia:

I offered my amendment for the purpose of meeting that point. I second Mr. King's motion that it be referred to the Executive Committee. That committee will act in accordance with the general view of the Association.

John M. Moore, of Arkansas:

It is the opinion of the President that it is competent for the Association to instruct the Executive Committee.

Rufus King, of Ohio:

I move that it be referred to the Executive Committee, with a request that they ascertain, by a circular to each of the members of the Association, their wishes or views as to changing the place of meeting, and I move the previous question.

John M. Shirley, of New Hampshire:

I did not vote for the suggestion last year to go to White Sulphur Springs, although I suggested to gentlemen that I was willing to go. The truth is, I rather wanted to go. I think we Eastern men are entirely willing to go to Chicago or Atlanta or White Sulphur Springs; but we want that to be done which is for the best interests of the Association. I have had the idea from the outset that this

was a matter which, by the Constitution, belonged to the Executive Committee; that it was made their duty to determine it; but I believe that those present here can determine this matter, and then the matter will be settled.

Charles A. Peabody, of New York:

It seems to me that this reference to the Executive Committee, with rigid instructions as to just what they shall do, is really very much like sending a servant without any discretion in the matter. I would like to have this thing referred to the Executive Committee. I am not opposed to going to Chicago, and I am in doubt how I would vote upon that subject. Last summer I had the pleasure of seconding the resolution to go to White Sulphur Springs. It is an ancient, historical region. The whole of this country was once represented by the Green Brier, White Sulphur Springs; and I had great respect and veneration for the fact that the Southern gentlemen of Savannah, in your state, sir, and from South Carolina, in the months of May and June, prepared their horses and carriages, and started for a three or four weeks' tour to that place, where they met kindred spirits, and where they were accustomed to enjoy themselves and consider and mature the subjects of national as well as social interest. I am in favor, sir, decidedly, of taking the course that is most acceptable to this body. I am in favor of referring this matter to the Executive Committee, with nothing more than a suggestion to them as to the manner in which they shall consult the wishes of the body. I would not have the Executive Committee send out inquiries to all the members of this Association, and get answers from several hundred who never attend the meetings, and let them prevail; but I would have the committee exercise their own discretion and good judgment on the subject.

John M. Gaut, of Tennessee :

I have a resolution which coincides with the sentiments which have been expressed, I think. It is this :

Resolved, That it is the sense of this Association that the Executive Committee will subserve the interests of the Association by calling the subsequent meetings in different sections of the country from year to year, as far as practicable.

Alexander Porter Morse, of the District of Columbia :

That is not in order at this time.

The President :

Does the gentleman from Ohio accept this in lieu of his resolution ?

Rufus King, of Ohio: No, sir.

The President :

The Chair is of the opinion that the amendments have gone as far as they can under the rule.

Robert D. Benedict, of New York :

As I understand the resolution of Mr. King, it does not bind the Executive Committee. It simply requests them to ascertain the sentiment of the Association by a circular addressed to all the members of the Association, and it still leaves to that committee the selection of the place;—not merely to register the vote of the majority, but to select the place of meeting. In view of all the considerations which have been suggested, it seems to me that that is where the matter ought to be left.

Charles A. Peabody, of New York :

That is undoubtedly the purpose of the resolution, but I wanted to avoid the necessity of compelling them to do just what a mere servant would do. I agree with the gentleman who has just spoken, if they are left free.

Wm. Allen Butler, of New York :

I trust that the motion will not prevail. The gentlemen who take the trouble to come here certainly ought to be able to give an intelligent expression of their views, and give it here. Now, to put upon the Executive Committee and upon the Secretary—because it would fall upon him—the laborious duty of consulting by mail with several hundred gentlemen, I think is very onerous, and will lead to no good result, because gentlemen who receive the circular may or may not attend to it. The place of our next meeting should be printed upon the record of the proceedings this year. Article IX. of the Constitution entrusts this matter to the Executive Committee, and it belongs to them. It is their province to act upon the question. Any expression of opinion by the Association at its Annual Meeting would receive their most respectful attention. It could not be binding upon them, unless you amend the Constitution by a two-thirds vote. If as was done last year, of course the committee would endeavor to accommodate their decision to the views thus expressed. We made an honest effort last year to go to White Sulphur Springs. I saw the proprietor myself, and he told me he would make every possible effort to accommodate us. But it turned out that we wanted to go there, perhaps two hundred strong, in the middle of the season. Therefore we had to give that up. If it is the sense of a large portion of the gentlemen here that it would be advisable to go to Chicago, let us have that expressed, and then the Executive Committee will have some guide in determining the question confided to them by the Constitution. I trust this resolution of my friend will not prevail.

John M. Moore, of Arkansas :

I move to lay the original resolution on the table.

Wm. Allen Butler, of New York : I second that motion.

John M. Gaut, of Tennessee:

I hope the gentleman will withdraw his motion for a moment. I have a resolution to read.

John M. Moore, of Arkansas:

I withdraw the motion to lay on the table, and then the gentleman can introduce his resolution as an original.

C. C. Bonney, of Illinois:

I have a painful consciousness that time is being occupied, and therefore am extremely anxious to facilitate matters. I am quite willing to withdraw my resolution if before the offering of any resolution it may take the sense of what is in here. I beg the indulgence of the meeting to let our brother from Tennessee present his resolution. Perhaps it may cover the ground.

The President:

Let the gentleman from Tennessee read his resolution, then.

John M. Gaut, of Tennessee:

Resolved, That it is the sense of this Association that the Executive Committee will subserve its interests by calling its subsequent meetings in different sections of the country, from year to year, as far as practicable, and it recommends that the next meeting be held at Chicago.

C. C. Bonney, of Illinois: I withdraw my resolution.

Robert E. Monaghan, of Pennsylvania:

Is there not a motion pending to lay on the table?

The President:

That has been withdrawn. Every motion growing out of Mr. Bonney's resolution is taken from the consideration of the house. It was competent for the mover of the original resolution to withdraw it, notwithstanding the motion had been made to lay it on the table.

Robert E. Monaghan, of Pennsylvania :

The gentleman has not withdrawn his resolution. He declined to offer it.

The President :

The point may be well taken; but the resolution was introduced by the gentleman from Illinois, and though he did decline to offer its adoption, through modesty characteristic of his region, it was offered nevertheless.

C. C. Bonney, of Illinois :

To split that hair with perfect precision, let me say that I moved the resolution and laid it on the table temporarily, but I said, precisely, that I would not even call for the adoption of the resolution. That was left to my friend from New York. It was a calling for the adoption of my resolution, not the adoption of another resolution.

Richard T. Merrick, of the District of Columbia :

Has the resolution of the gentleman from Illinois been withdrawn.

The President : It has.

Richard T. Merrick, of the District of Columbia :

Then there is nothing before the house?

The President : There is nothing before the house.

At this point the member from Tennessee read his resolution.

Richard T. Merrick, of the District of Columbia :

I move to lay that resolution on the table.

The President :

The question will be put if the Association understands it. The question is upon the motion of the gentleman from Washington to lay this resolution on the table.

The motion to lay on the table was carried by a vote of 54 to 20.

Henry Reed, of Pennsylvania :

The report of the committee of the Law Association of Philadelphia, appointed December 5th, 1882, to consider the subject of the delays to suitors in the Supreme Court of the United States, and the various plans for the relief of that court which have been suggested, was introduced by Mr. Vaux, and laid upon the table, subject to the call of the Association. To bring up the whole matter, I would now offer the following resolution :

Resolved, That this Association commend to the consideration of Congress, with its approval, the scheme for a single court of appeal to hear all appeal cases in which the jurisdiction of the circuit courts has been acquired by the citizenship of the parties only, and the appointment of an additional circuit judge, who, with the circuit and district judges of his circuit, shall constitute the circuit court *in banc*, substantially as the same is provided for in the bills proposed by the Law Association of Philadelphia.

W. H. H. Russell, of New York :

I move that the resolution be referred to the committee on Judicial Administration.

Henry Reed, of Pennsylvania :

I hope that that will not be done without some expression of views from this Association. It is very possible that this question may cease to be a living issue before the next meeting of this Association. It is hardly probable that this subject will come before us again. I think that if the Association takes any action, it had better do so now. It is not well to adjourn without some further discussion upon this particular measure. I hope that that resolution will not be passed.

W. H. H. Russell, of New York :

For the purpose of allowing the gentleman to discuss

the merits of the matter referred to, I will withdraw my motion for the present.

Henry Reed, of Pennsylvania:

I come here to ask your consideration of the subject of delays in the United States Supreme Court, and the various plans for the relief of that court. I come as a messenger. Should I succeed in doing it in such a way as to enlist your interest, my mission will have been fulfilled.

The Law Association of Philadelphia is a body of some age, and I think I may say of some standing. It is the organization of one of the oldest bars of the country, with a past of which it has every reason to be proud, and a future to which we may look forward with hope. That Association has given this subject considerable attention. It has, during the past winter, taken up two subjects for consideration: How to speed the disposition of cases in the Supreme Court of the State of Pennsylvania, and also the speedy disposition of cases in the Supreme Court of the United States. The committee to whom that latter problem was referred took up the proceedings of this Association at its last meeting, and gave them most careful and, I think, most impartial attention. I do not think that men ever brought to a subject less prejudice than the members of that particular committee. I will not say of its members that they were not the advocates of special measures; but after having read all that was said on both sides, they thought that the problem before them was not whether to advocate one or the other of these measures, or to strengthen the party on one side or the other. They endeavored to see if it was not possible to hit upon some plan by which the object in view might be accomplished.

You will pardon me if I take up a little of your time in considering the two bills before this Association last year,

and then calling attention to the manner in which the plan suggested by the Philadelphia Association endeavors to meet the desired objects.

The bill introduced by Senator Davis provides substantially that there shall be a court of appeal in every circuit of the United States, which shall consist of six judges, and that their finding shall be final in most cases. The committee made an examination as to the character of the cases which come up in the Supreme Court, and it was found that one-third were those depending on citizenship only—cases which had nothing whatever to do with the law of nations or the Constitution and laws of the United States, for the settlement of which the Supreme Court of the United States was established. They involve questions of common law, which it has always been deemed that the courts of highest resort in the various states are competent to decide, and they are brought to the Supreme Court simply because there is no other court to which an appeal would lie. Why should not a court of appeal, of equal dignity with the supreme courts of the states, be equally competent to hear and decide such questions? Such a court would secure to a defendant who fears prejudice all that he could obtain in the courts of his own state, viz.: a fair trial by an impartial tribunal, and a review by a court of great dignity, whose jurisdiction would be solely an appellate one.

There was a practical objection to establishing one new court, that, if it were to hold its sessions in Washington, there would be the loss of one conspicuous merit of the Davis bill—the convenience to suitors. A single court of appeal might hold sessions once a year in each of the four great divisions of the Union. It would not be desirable that this court should pass finally upon any questions of strictly federal law; but it might be a court of

final appeal in all cases where the jurisdiction below was based merely on the citizenship of the parties, if it were not for the constitutional objection that there shall be "one Supreme Court." There must therefore be a right of appeal to the Supreme Court. The money-limit, however, may be fixed so high as practically to secure the advantage sought, while still keeping within the constitutional provision.

There remained one important and great benefit secured by the Davis bill, not provided for by the foregoing suggestions—the review of district and circuit court judgments in cases under \$5,000 in amount. This we have sought to obtain by the addition of one circuit judge to each circuit, who can share the labors of the present judge while time will be secured to both of them to sit with the justice of the supreme court or the judge of a neighboring circuit court, and the district judge, as the circuit court *in banc*, in which there will be always at least two new minds to consider the rulings of a single judge.

Robert D. Benedict, of New York:

I have examined this report and the bill attached. I looked to see what remedy was proposed for the difficulties in the admiralty branch. To my great surprise I find nothing on that subject. I would ask the gentleman from Pennsylvania whether that matter was left out inadvertently or intentionally. Certainly it seems to me that it is a matter which should be attended to.

Henry Reed, of Pennsylvania:

The feeling was that we should take as few steps by way of change as possible. Our object was to keep the thing close to the issue. We did not go into the whole scheme of possible reform, because that seemed to be somewhat

beyond the question laid before us. If the language of the proposed bill is not sufficiently comprehensive to include admiralty cases, the sub-committee of the Law Association of Philadelphia, who are here present, have authority to make the necessary change.*

Robert D. Benedict, of New York:

It seems to me that the Law Association of Philadelphia in this respect have left out the point where relief was mainly needed. There is no part of the judicial system where there are greater difficulties felt in reference to that matter than in reference to admiralty cases, and yet this bill provides for an appeal to three judges of the Supreme Court in all cases of law and equity, but says nothing whatever of any relief to admiralty. That is, to my mind, simply a reason why this matter should be referred to a committee of this Association for report.

William P. Wells, of Michigan:

The subject brought before the Association by the resolution offered by the gentleman from Philadelphia was, as he doubtless is aware, the main subject of the discussions—at least the most important subject of the discussions—of the

* It has been suggested, upon the authority of *Atkins vs. The Disintegrating Company* (18 Wallace, 272), that the words used in section 14 of the proposed bill, viz., "every case of writ of error, appeal, . . . or other proceeding at law or in equity designed, as allowed by existing law, to obtain a review of any decree, judgment, finding, or ruling of any judge of the circuit or of the district court," do not include cases of admiralty or maritime jurisdiction. But it may be doubted whether the decision in *Atkins vs. The Disintegrating Company*, being the result of a comparison of several acts *in pari materia*, which had a special purpose, would be extended to a statute of so general a character as the proposed bill. To meet all doubt, however, the fourteenth section of the latter could be amended to read, "every case of writ of error, appeal, . . . or other proceeding at law or in equity, or belonging to the admiralty or maritime jurisdiction," etc.—HENRY REED.

Association last year. It was brought before the last meeting of the Association upon the report of a committee composed of the most distinguished members of this body, upon their majority and minority reports, which presented the two different schemes which have been before the profession for a long time, for the purpose of accomplishing this most needed relief. The discussion that followed upon the reports was an interesting one. The majority report was adopted as the sense of this Association. It stands, then, as the vote of this Association, that some scheme for this purpose, which involves the creation of intermediate courts of appeal, by addition to the number of circuit court judges, is the most desirable one to reach the object. I think the whole scheme proposed by the Philadelphia Law Association is commendable. My approval of the Davis scheme rested largely upon two considerations: 1. That it gave us more judges for circuit court duty, and it has been an especial hardship to the courts of the West that there was so little attendance on the part of the circuit judge. It has been our experience that the circuit court judge—not the Supreme Court judge assigned to the district, but the regular circuit judge—was a little disposed to abridge the time that he sat in the several circuit courts. Practically, as we all know, that results in making the judge of the district court final. And, as I say, that seemed to me an important element in deciding this question—that the Davis scheme provided more circuit judges. 2. My own mind was strongly influenced by what was known as the constitutional objection to the scheme of putting the Supreme Court into divisions. I do not think that my friends who favored that scheme successfully answered the objection, and I do not think it has been successfully answered anywhere. Now, upon these considerations it seemed to me that what is known as the Davis scheme was preferable. That proposed by the

bar of Philadelphia embodies substantially the creation of a number of intermediate courts of appeals, and provides additional circuit judges. It does not, however, provide for the session of a court of appeals in every circuit, as in the Davis bill, but for a session of this court of appeals in the four great divisions of the Union.

I am not prepared to say that, if it were desirable for us to take a final vote, I should not vote in favor of this proposition; but I do not think that year after year it is well for us to take action communicating our views of the question to Congress. I shall therefore, while entertaining with great respect this proposition, and desiring to keep it before the members of this Association, make a motion which will leave the matter open for full discussion, and that is to refer this resolution and the accompanying report to the Committee on Judicial Administration.

(NOTE.—Mr. Russell had already made that motion.)

The President:

Are you prepared for the question? The motion is to refer this whole matter to the Committee on Judicial Administration.

N. Dubois Miller, of Pennsylvania:

I merely want to make one explanation as to the reason for bringing this matter before the Association after it had been so thoroughly discussed at the last meeting.

It was thought that the voice of this Association should be powerful in influencing any legislation in Congress, but it was also thought that a house so entirely divided against itself, as the result of the discussion last year showed this Association to be, could hardly be so influential as a positive expression of opinion from the Association, if it could be obtained, in the interest of a measure which could secure friends from both sides of the house represented last year.

The only reason for bringing this matter now before the Association is, that we may ascertain whether it commends itself to a larger number than either measure proposed last year. For that reason only I should be anxious to hear some further discussion from gentlemen who are present.

D. S. Troy, of Alabama :

This matter has been pressing itself upon our attention for some time. It seems to me that the plan of dividing the Supreme Court into sections will accomplish the purpose better than the other plan. It was remarked in one of the papers read before this Association, that the judgment of three judges was ordinarily as good an exposition of the law as that of nine. Indeed, the opinion of the courts in most cases is the opinion of one man, shaped and modified, more or less, by collision with the intellects of his associates; but the experience of the legal profession, and its history, demonstrate that, for correct judgment, three men are all that are ordinarily required.

The constitutional difficulty about dividing the Supreme Court into sections, manifested in the debates on this subject at the last meeting of the Association, arises, it seems to me, from a want of discrimination between the decision of a cause and the judgment of the court. The two things are essentially distinct. The judgment affects the parties litigant; but the decision, as an exposition of the principles of law involved, affects the public. It is the right of the parties litigant to the judgment of the court which the Constitution secures, and not the right of the public to an exposition of legal principles in any given case. And this constitutional right of the parties to the judgment of the court is not violated because that judgment is rendered upon an exposition of the legal principles involved, made by a part only of the court.

Where a court is composed of three judges, we know that ordinarily the opinion is prepared by one of the judges; the other two assent, and the judgment of the court is entered in accordance with the opinion; and where the judges are overworked, or are indolent, it not unfrequently happens that the judgment of the court is based entirely on the *decision* of one man. This is an evil which has been felt in the supreme court probably of every state in the Union—certainly in every one whose decisions have fallen under my observation—and the existence of the evil illustrates the distinction between the decision and the judgment to which I wish to call attention.

When a judge has sufficient confidence in the learning, acumen, and sound judgment of one of his brothers on the bench, he can very conscientiously assent to the rendition of judgment in accordance with the decision of his brother judge, without a critical examination of the legal questions for himself.

The justices of the Supreme Court of the United States, and of all other supreme courts, doubtless do this now very frequently, and the proposition is to authorize the Supreme Court to do it avowedly, whenever the decision has been concurred in by three of their number. It is not proposed to substitute the judgment of a division or section of the Supreme Court for the judgment of the court itself, nor to *require* the court to render judgment in accordance with the decision of a division; but simply to *authorize* it. Unless the syllabus of the case presented a question of more than ordinary difficulty or importance, I apprehend that the judges of the Supreme Court, if authorized by law, would readily assent to a judgment based upon a decision of three of their number; and if the question was of such difficulty or importance as to render this course improper,

the case would be heard by the court *in banc*; or if the difficulty or importance of the question was only developed by the decision of the division, the case could be re-argued before the court *in banc*. Take up any volume of reports, and examine the first one hundred cases, and you will not find ten cases of such a character that the most conscientious judge would not have been willing to render judgment in them on the decision of three of his brethren on the bench.

It is not necessary to require the Supreme Court to render judgment on the decision of a division; it is only necessary to authorize it. Modern mechanical science has made no greater progress than in the proper use of gravitation; and if the judicial machinery is geared in the way proposed, judicial inertia will accomplish all, if not more, than is desired; and it will be very rare that a case will come along presenting a question which a majority of the judges will think requires a critical examination by every one of them.

I can see no reason why the Supreme Court could not be divided into three sections or divisions, each consisting of a chief of the division and two associates; each division to sit and hear causes at the same time. For example, the chief justice and two associates might hear cases involving constitutional or federal questions; the associate justice oldest in commission, as chief of a division, and two associates might hear appeals in equity and admiralty; and the associate justice next oldest in commission, as chief of division, and the two remaining associates might hear common law and criminal cases. If a case came before any division involving a question which the division thought ought to be decided by the court *in banc*, the case could be transferred to the docket of cases to be heard in that way; if the division proceeded to a decision, a syllabus of the case or a printed copy of the decision could be

presented to each of the judges; and if a majority considered it a case requiring a decision by the court *in banc*, the case could be set down for re-argument before the whole court, otherwise judgment would be entered upon the decision of the division.

As the matter stands, we have nine men doing work, nearly all of which can be done just as well by any three of them; and by authorizing them to divide their labors, more than twice as much can be accomplished as at present. This change would not interfere with the plan of intermediate appellate courts, but would probably render them unnecessary.

But I do not propose now to discuss the merits of either plan. A bill to divide the Supreme Court into sections as above suggested was introduced, I believe, in the United States Senate by one of the senators from Alabama. I merely wish to call attention to the clear distinction between the decision of the cause and the judgment of the court, which was overlooked in the discussion of this matter last year before this Association, and which, it seems to me, eliminates entirely the supposed constitutional difficulties.

James M. Dudley, of New York :

From the constitutional question, and the manner in which it is involved in this proposition discussed by my friend who has just taken his seat, why, if you can divide the Supreme Court of the United States into three separate divisions, and make the decisions of each of those three divisions the judgment of the court; or rather, by legislative provision, determine that they shall be entered as the judgment of the court—why can you not divide it into nine sections, and make every one of the justices a chief justice of his own court; and then, instead of having one or three divisions of the court, have nine of them?

The motion to refer to the Committee on Judicial Administration and Remedial Procedure was adopted. (*See the Report in the Appendix.*)

Charles S. Bradley, of Rhode Island :

I suggest that they shall report to the Association. I believe that there is no such clause in the preceding resolution, in regard to what I may term "the Philadelphia plan." Is it or is it not understood that the committee has power to act, without reporting to this Association?

The President :

If it is for the Chair to decide, the answer would be that it has not. The committee has no power to act unless it is distinctly given. They would only have power to report.

Edward Otis Hinkley, of Maryland :

There is nothing in the reference, Mr. President, of the matter to the Committee on Judicial Administration to give them power to act in any matter.

Nathaniel W. Ladd, of Massachusetts :

In regard to the resolution offered by the gentleman from Pennsylvania, as I understand, the committee will report at the next Annual Meeting of this body. If that is not so, I now move that they be requested to make such a report.

The motion was seconded.

The President :

It is virtually an addition to the resolution of reference, that the committee to whom that resolution has been referred be requested to make a report at the next Annual Meeting of this Association.

W. H. H. Russell, of New York : I accept the amendment.

The President :

As the resolution has already been passed, it is necessary

for the Association to act upon it, otherwise I would allow the gentleman to accept the amendment at once.

Upon a vote being taken to add to the resolution as stated by the President, the same was adopted.

The President:

There seems to be no further reports from the official bodies provided by this Association, and therefore any miscellaneous business is in order.

Frank P. Pritchard, of Pennsylvania, offered the following:

Resolved, That the paper read by Judge Thompson on "Abuses of the Writ of Habeas Corpus," he referred to the Committee on Jurisprudence and Law Reform, to report as to the best method of remedying such abuses.

The resolution was adopted.

J. Hubley Ashton, of the District of Columbia:

I desire to call attention to a brief resolution in relation to an event which has saddened the hearts of a great many members of this Association, and has occasioned, I think, a loss almost irreparable to the profession and to the country. I refer to the death of Jeremiah S. Black. Judge Black was not a member of this Association, and some doubt has been expressed by a number of the members in regard to the propriety of our noticing the death of any member of the profession, however distinguished, who was not connected with us. I myself have no difficulty in regard to that. As a general rule, of course, this Association has not felt itself called upon, and will not in the future feel called upon, to notice the death of distinguished lawyers throughout the country who are not members of this Association; but the case of Judge Black seems to me, and I think has seemed to many members of the Association, an exceptional one. He was undoubtedly one of the most distinguished men of our

profession. He was beyond all question one of the greatest advocates that the legal profession has ever embraced within its ranks. He was Attorney General of the United States, and I think it may be said that he was one of the greatest law officers of this government. I think the Association may well consider that in honoring his memory it is honoring itself. I therefore offer this resolution:

Resolved, That the American Bar Association has learned with deep regret of the recent death of Jeremiah S. Black, an eminent citizen and jurist of the state of Pennsylvania, formerly Chief Justice of that state, and Attorney General and Secretary of State of the United States, and hereby express the sincere and heartfelt sympathy of each and all of its members with the family of the deceased in their great affliction.

Resolved, That the President and Secretary of the Association and the Chairman of the Executive Committee are requested, as a special committee of the Association, to transmit to the widow of the late Judge Black a copy of the foregoing resolution.

The President:

Since reference has been made to the fact that this is an extraordinary case, and that some doubt may have been expressed as to its coming within the purview of the ordinary action of the Association, as your presiding officer, I have no hesitation in saying that I feel it is competent to put this question to the American Bar Association. The circumstances in the life of the distinguished deceased, the position which he held, and the fact that he was carried to his tomb at the very moment of our assembling, would seem to call upon us to give utterance to the effusions of our hearts; and though the notes of lamentation do burst forth from every quarter of this great country, yet we,

the members of the bar, mourn the loss of our illustrious brother with a sadness of our own. I therefore have no hesitancy in putting this resolution before you for adoption.

The resolution was adopted by a rising vote.

Luke P. Poland, of Vermont:

As there is no further business to be brought before the Association at this time, I move that the public meetings of the Association be adjourned.

The motion was seconded.

The President:

The motion is that we now adjourn the public meetings of this our Sixth Annual Convention, with the understanding that we meet for the purpose of partaking of our annual dinner at half-past eight o'clock this evening.

The meeting was then adjourned *sine die*.

EDWARD OTIS HINKLEY,

Secretary.

REPORT OF THE TREASURER.

SARATOGA SPRINGS, August 22, 1883.

The Treasurer submits the following Report for the year ending August 21, 1883:

Dr.

To balance from last report,	\$1,342 15
To cash received—dues of members,	2,645 00
	----- \$3,987 15

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1882.

Aug. 8.	By cash paid Expressage,	83 50
	Printing,	1 50
	Expenses of Clerk to Executive Committee,	31 30
	Janitor, Music Hall,	10 00
	Incidental expenses of dinner,	7 00
	Expressage,	1 40
	Stationery and telegrams,	2 45
Aug. 12.	Posting bills,	3 00
Aug. 17.	Cash balance,	3 00
	C. G. Artzt, expenses of Fifth Annual Meeting,	26 30
Aug. 18.	J. H. Minnis, for copy of Fifth Annual Address,	10 60
Aug. 26.	Expressage,	50
Aug. 30.	Expressage,	1 00
	Amounts carried forward,	8701 55
		----- \$3,987 15

77

1882.	Amounts brought forward,	\$101 55	\$3,987 15
Sept. 4.	By cash paid Expressage and telegrams,	40	
Sept. 9.	J. H. Minnis, stenographer,	60 00	
	Grand Union Hotel, Fifth		
	Annual Dinner,	431 00	
	Postage,	32 00	
	A. Putnam, Jr., for use of		
	Music Hall, four days,	120 00	
Oct. 20.	Postage stamps,	5 00	
Nov. 22.	Printing,	22 25	
Dec. 9.	Postage stamps,	5 00	
1883.			
Feb. 1.	Clerk to Treasurer, twenty-		
	five weeks,	50 00	
Mar. 1.	Postage, expressage, etc., in		
	mailing Fifth Report,	126 50	
	Clerical services in preparing		
	and mailing Fifth Report,		
	etc.,	50 00	
Mar. 10.	Printing Fifth Annual Report		
	and Reports of Special Com-		
	mittee on Supreme Court		
	Delays, and extra pamph-		
	lets,	1,191 95	
April 20.	Printing,	6 25	
May 2.	Postage for notices, etc.,	50 00	
June 1.	Printing extra notices,	80	
June 25.	"	10 00	
July 20.	Postage stamps,	10 00	
	Printing extra notices,	60	
July 30.	Postage,	5 00	
	Expenses of Committee on		
	Jurisprudence and Law Re-		
	form,	52 30	
Aug. 9.	Circulars and envelopes,	8 50	
Aug. 15.	Boxes,	2 00	
	C. G. Artzt, expenses sixth		
	meeting,	41 50	
Aug. 16.	Printing programme,	18 00	
	Amounts carried forward,	\$2,400 00	\$3,987 15

1880.	Amounts brought forward, . . .	\$2,400 69	\$3,987 15
Aug. 16.	By cash paid Clerk to Treasurer, balance in full, twenty-nine weeks,	58 00	
	Sundry expenses, telegrams, etc.,	7 94	
Aug. 21.	E. Otis Hinkley, postage, etc., expenses of secretary, . . .	35 87	
		<u>\$2,502 50</u>	
	Balance,	1,484 65	
		<u>\$3,987 15</u>	
	Which consists of—		
	Balance to the credit of the Treasurer in the Common- wealth National Bank of Philadelphia,	1,480 21	
	Cash on hand,	4 44	
		<u>\$1,484 65</u>	

All bills due by the Association up to the time of making up this Report have been paid.

The expenses during the year have been much larger than in previous years; especially in printing the proceedings of the last meeting, and the supplemental volume containing the debate on the resolution of the Committee on Delays in the Supreme Court of the United States.

The balance reported at the end of the 1st year, 1879, was . . .	\$734 87
2d 1880,	825 98
3d 1881,	1,296 47
4th 1882,	1,342 15
5th 1883, as above, 1,484 65	

Respectfully submitted,

FRANCIS RAWLE,

Treasurer.

Audited and found correct.

WM. P. WELLS,

CHARLES BORCHERTING,

Auditing Committee.

LIST OF MEMBERS ELECTED.

ALABAMA.

MOORE, GEORGE F., Montgomery.

CONNECTICUT.

HAISEY, JEREMIAH, Norwich.

LUCAS, SOLOMON, Norwich.

STANTON, LEWIS E., Hartford.

WEST, MARLON R., Hartford.

DELAWARE.

GRUBB, IGNATIUS C., Wilmington.

DISTRICT OF COLUMBIA.

DARLINGTON, JOSEPH J., Washington.

EARLE, WILLIAM E., Washington.

HAMILTON, GEORGE EARNEST, Washington.

HOFFMAN, CHARLES W., Washington.

LANCASTER, CHARLES C., Washington.

MCARTHUR, ARTHUR, Washington.

MCCAMMON, JOS. K., Washington.

MURPHY, D. F., Washington.

FLORIDA.

COOPER, C. P., Jacksonville.

COOPER, JOHN C., Jacksonville.

GEORGIA.

DE BIGNON, FLEMING G., Milledgeville.

GARRARD, WILLIAM, Savannah.

MELDRIM, P. W., Savannah.

OWENS, GEORGE W., Savannah.

ILLINOIS.

ARNOLD, ISAAC N.,	.	.	.	Chicago.
BLACK, J. C.,	.	.	.	Danville.
DENT, THOMAS,	.	.	.	Chicago.
EDSALL, JAMES K.,	.	.	.	Chicago.
EDWARDS, B. S.,	.	.	.	Springfield.
GROSS, WILLIAM L.,	.	.	.	Springfield.
HAMILTON, JOHN M.,	.	.	.	Springfield.
MCCARTNEY, JAMES,	.	.	.	Springfield.
CULLOM, SHELBY M.,	.	.	.	Springfield.
MOULTON, S. W.,	.	.	.	Shelbyville.
MURPHY, THEODORE D.,	.	.	.	Woodstock.
ORENDOFF, ALFRED,	.	.	.	Springfield.
PALMER, JOHN M.,	.	.	.	Springfield.
RIGGS, JAMES M.,	.	.	.	Winchester.
TETHILL, RICHARD S.,	.	.	.	Chicago.

INDIANA.

BAKER, JOHN H.,	.	.	.	Goshen.
GRESHAM, WALTER Q.,	.	.	.	Indianapolis.

KENTUCKY.

THORNTON, A. R.,	.	.	.	Lexington.
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LOUISIANA.

BLANC, SAMUEL P.,	.	.	.	New Orleans.
DENEGRE, GEORGE,	.	.	.	New Orleans.
FARRAR, EDGAR H.,	.	.	.	New Orleans.
KENNARD, JOHN H.,	.	.	.	New Orleans.
KRUTSCHNITT, ERNEST B.,	.	.	.	New Orleans.
LEGENDEE, JAMES,	.	.	.	New Orleans.

MARYLAND.

HANDY, JOHN H.,	.	.	.	Baltimore.
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MASSACHUSETTS.

COLLINS, PATRICK A.,	.	.	.	Boston.
CURTIS, BENJAMIN ROBBINS,	.	.	.	Boston.
USHER, EDWARD PRESTON,	.	.	.	Boston.

MICHIGAN.

BAKER, FREDERICK A.,	.	.	.	Detroit.
BROWN, HENRY B.,	.	.	.	Detroit.

MICHIGAN—Continued.

KIEHNER, OTTO,	Detroit.
MEDDAUGH, ELLIAH W.,	Detroit.
WALKER, CHARLES J.,	Detroit.

MISSOURI.

BARCLAY, SHEPARD,	St. Louis.
JUDSON, FREDERICK N.,	St. Louis.
LATHROP, GARDINER,	Kansas City.
MUNFORD, JAMES E.,	St. Louis.
TONEY, JAY L.,	St. Louis.

NEW JERSEY.

SCHENCK, ABRAM V.,	New Brunswick.
SHIPMAN, J. G.,	Belvidere.
WOODRUFF, ROBERT S.,	Trenton.

NEW YORK.

BRUSH, CHARLES H.,	New York.
BUTLER, WILLIAM ALLEN, JR.,	New York.
COX, S. S.,	New York.
DORSEIMER, WILLIAM,	New York.
OLMSTEAD, AARON B.,	Saratoga Springs.
PEABODY, CHARLES A., JR.,	New York.
SHACK, FERDINAND,	New York.
TUCK, SOMERVILLE P.,	New York.

NORTH CAROLINA.

BRIDGERS, JOHN L., JR.,	Tarboro'.
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OHIO.

BURKE, STEVENSON,	Cleveland.
CHERRINGTON, THOMAS,	Ironton.
GROESBECK, WILLIAM S.,	Cincinnati.
HALL, JOHN J.,	Akron.
JOHNSON, WILLIAM W.,	Ironton.
KOHLER, JACOB A.,	Akron.
NEAL, HENRY S.,	Ironton.
OVLATT, EDWARD,	Akron.

OREGON.

DEADY, MATTHEW P.,	Portland.
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PENNSYLVANIA.

ATHERTON, THOMAS H.,	Wilkesbarre.
BREDIN, JAMES,	Butler.
LISTER, CHARLES C.,	Philadelphia.
MILLER, N. DUBOIS,	Philadelphia.
PRICHARD, FRANK P.,	Philadelphia.
ROGERS, GEORGE W.,	Norristown.
TOWNSEND, WASHINGTON,	West Chester.

RHODE ISLAND.

PAYNE, ABRAHAM,	Providence.
PECKHAM, FRANCIS B.,	Newport.

SOUTH CAROLINA.

DARGAN, E. KEITH,	Darlington C. H.
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TENNESSEE.

FRAYSER, R. DUDLEY,	Memphis.
GAUT, JOHN M.,	Nashville.

TEXAS.

GRESHAM, WALTER,	Galveston.
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VERMONT.

McCULLOUGH, JOHN G.,	N. Bennington.
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WEST VIRGINIA.

CAMPBELL, JOHN A.,	New Cumberland
COLE, W. L.,	Parkersburg.
DAVIS, JOHN J.,	Clarksburg.
SOMMERVILLE, J. B.,	Wellsburg.

RECAPITULATION.

States.	No. of Members.	States.	No. of Members.
ALABAMA,	1	NEW JERSEY,	3
CONNECTICUT,	4	NEW YORK,	9
DELAWARE,	1	NORTH CAROLINA,	1
DISTRICT OF COLUMBIA,	8	OHIO,	8
FLORIDA,	2	OREGON,	1
GEORGIA,	4	PENNSYLVANIA,	7
ILLINOIS,	16	RHODE ISLAND,	2
INDIANA,	2	SOUTH CAROLINA,	1
KENTUCKY,	1	TENNESSEE,	2
LOUISIANA,	6	TEXAS,	1
MARYLAND,	1	VERMONT,	1
MASSACHUSETTS,	3	WEST VIRGINIA,	4
MICHIGAN,	5		—
MISSOURI,	5	TOTAL,	99

MEMORANDUM.

The Annual Dinner was given on Friday evening, August 24th. at the Grand Union Hotel. Edward J. Phelps, of Vermont, presided. Over one hundred members were present.

CONSTITUTION.

NAME AND OBJECT.

ARTICLE I.—This Association shall be known as “THE AMERICAN BAR ASSOCIATION.” Its object shall be to advance the science of jurisprudence, promote the administration of justice and uniformity of legislation throughout the Union, uphold the honor of the profession of the law, and encourage cordial intercourse among the members of the American Bar.

QUALIFICATIONS FOR MEMBERSHIP.

ARTICLE II.—Any person shall be eligible to membership of this Association who shall be, and shall, for five years next preceding, have been, a member in good standing of the Bar of any state, and who shall also be nominated as hereinafter provided.

OFFICERS AND COMMITTEES.

ARTICLE III.—The following officers shall be elected at each Annual Meeting for the year ensuing: A President (the same person shall not be elected President two years in succession); one Vice-President from each state; a Secretary; a Treasurer; a Council, consisting of one member from each state (the Council shall be a standing committee on nominations for office); an Executive Committee, to be composed of the Secretary and Treasurer, together with three members to be chosen by the Association, one of whom shall be Chairman of the committee.

The following committees shall be annually appointed by the President, for the year ensuing, and shall consist of five members each :

- On Jurisprudence and Law Reform;
- On Judicial Administration and Remedial Procedure;
- On Legal Education and Admissions to the Bar;
- On Commercial Law;
- On International Law;
- On Publications;
- On Grievances.

A majority of those members of any committee, including the Council, who may be present at any meeting of the Association, shall constitute a quorum of such committee for the purposes of such meeting.

The Vice-President for each state, and not less than two other members from such state, to be annually elected, shall constitute a Local Council for such state, to which shall be referred all applications for membership from such state. The Vice-President shall be, *ex officio*, Chairman of such Council.

A committee of three, of whom the Secretary shall always be one, shall be appointed by the President at each Annual Meeting of the Association, whose duty it shall be to report to the next meeting the names of all members who shall, in the interval, have died, with such notices of them as shall, in the discretion of the committee, be proper.

It shall be the duty of the Vice-President from each state and territory to report the deaths of members within the same to the said committee.

ELECTION OF MEMBERS.

ARTICLE IV.—All nominations for membership shall be made by the Local Council of the state to the Bar of which the persons nominated belong. Such nominations

must be transmitted in writing to the Chairman of the General Council, and approved by the Council, on vote by ballot.

The General Council may also nominate members from states having no Local Council, and at the Annual Meeting of the Association, in the absence of all members of the Local Council of any state; *Provided*, That no nomination shall be considered by the General Council, unless accompanied by a statement in writing by at least three members of the Association from the same state with the person nominated, or, in their absence, by members from a neighboring state or states, to the effect that the person nominated has the qualifications required by the Constitution, and desires to become a member of the Association, and recommending his admission as a member.

All nominations thus made or approved shall be reported by the Council to the Association, and all whose names are reported shall thereupon become members of the Association; *Provided*, That if any member demand a vote upon any name thus reported, the Association shall thereupon vote thereon by ballot.

Several nominees, if from the same state, may be voted for upon the same ballot; and in such case placing the word "No" against any name or names upon the ticket shall be deemed a negative vote against such name or names, and against those only. Five negative votes shall suffice to defeat an election.

ARTICLE V.—All members of the Conference adopting the Constitution, and all persons elected by them upon the recommendation of the Committee of five appointed by such Conference, shall become members of the Association upon payment of the annual dues for the current year herein provided for.

BY-LAWS.

ARTICLE VI.—By-laws may be adopted at any Annual Meeting of the Association by a majority of the members present. It shall be the duty of the Executive Committee, without delay, to adopt suitable by-laws, which shall be in force until rescinded by the Association.

DUES.

ARTICLE VII.—Each member shall pay five dollars to the Treasurer as annual dues, and no person shall be qualified to exercise any privilege of membership who is in default. Such dues shall be payable, and the payment thereof enforced, as may be provided by the By-Laws. Members shall be entitled to receive all publications of the Association free of charge.

ANNUAL ADDRESS.

ARTICLE VIII.—The President shall open each Annual Meeting of the Association with an address, in which he shall communicate the most noteworthy changes in statute law on points of general interest made in the several states and by Congress during the preceding year. It shall be the duty of the member of the General Council from each state to report to the President, on or before the first day of May, annually, any such legislation in his state.

ANNUAL MEETINGS.

ARTICLE IX.—This Association shall meet annually in the month of July or August, at such time and place as the Executive Committee may select, and those present at such meeting shall constitute a quorum.

AMENDMENTS.

ARTICLE X.—This Constitution may be altered or amended by a vote of three-fourths of the members present at any Annual Meeting, but no such change shall be made at any meeting at which less than thirty members are present.

CONSTRUCTION.

ARTICLE XI.—The word "*state*," wherever used in this Constitution, shall be deemed to be equivalent to *state*, *territory*, and the *District of Columbia*.

BY-LAWS.

MEETINGS OF THE ASSOCIATION.

I.—The Executive Committee, at its first meeting after each Annual Meeting, shall select some person to make an address at the next Annual Meeting, and not exceeding six members of the Association to read papers.

II.—The order of exercises at the Annual Meeting shall be as follows:

- (a) Opening Address of the President.
- (b) Nominations and Election of Members.
- (c) Election of the General Council.
- (d) Reports of Secretary and Treasurer.
- (e) Report of Executive Committee.
- (f) Reports of Standing Committees:
 - On Jurisprudence and Law Reform;
 - On Judicial Administration and Remedial Procedure;
 - On Legal Education and Admissions to the Bar;
 - On Commercial Law;
 - On International Law;
 - On Publications;
 - On Grievances.
- (g) Reports of Special Committees.
- (h) The Nomination of Officers.
- (i) Miscellaneous Business.
- (j) The Election of Officers.

The address, to be delivered by a person invited by the Executive Committee, shall be made at the morning session of the second day of the Annual Meeting.

The reading and delivering of essays and papers shall be on the same day, or at such other time as the Executive Committee may determine.

III.—No person shall speak more than ten minutes at a time, or more than twice on one subject.

A stenographer shall be employed at each Annual Meeting.

IV.—Each state Bar Association may annually appoint delegates, not exceeding three in number, to the next meeting of the Association. In states where no state Bar Association exists, any city or county Bar Association may appoint such delegates, not exceeding two in number. Such delegates shall be entitled to all the privileges of membership at and during the said meeting.

V.—At any of the meetings of the Association, members of the Bar of any foreign country, or of any state, who are not members of the Association, may be admitted to the privileges of the floor during such meeting.

VI.—All papers read before the Association shall be lodged with the Secretary. The Annual Address of the President, the reports of committees, and all proceedings at the Annual Meeting shall be printed; but no other address made or paper read or presented shall be printed, except by order of the Committee on Publications.

Extra copies of reports, addresses, and papers read before the Association, may be printed by the Committee on Publications for the use of their authors, not exceeding two hundred copies to each of such authors.

The Secretary and Chairman of the Executive Committee shall endeavor to arrange with the Smithsonian Institution, or otherwise, a system of exchanges, by which our *Transactions* can be annually exchanged with those of other Associations in foreign countries interested in jurisprudence or governmental affairs; and also that the Secretary exchange our *Transactions* with those of the state and local bar associations; and that all books thus acquired be bound and deposited in the charge of the New York City Bar Association, subject to the call of this Association, if it ever desires to withdraw or consult them, if the latter association agrees to such deposit.

No resolution complimentary to an officer or member for any service performed, paper read, or address delivered shall be considered by the Association.

OFFICERS AND COMMITTEES.

VII.—The terms of office of all officers elected at any Annual Meeting shall commence at the adjournment of such meeting, except the Council, whose term of office shall commence immediately upon their election.

VIII.—The President shall appoint all committees, except the Committee on Publications, within thirty days after the Annual Meeting, and shall announce them to the Secretary, and the Secretary shall promptly give notice to the persons appointed. The Committee on Publications shall be appointed on the first day of each meeting.

IX.—The Treasurer's Report shall be examined and audited annually, before its presentation to the Association, by two members to be appointed by the Chairman of the Executive Committee.

X.—The Council and all standing committees shall meet on the day preceding each Annual Meeting, at the place where the same is to be held, at such hour as their respective chairmen shall appoint. If at any Annual Meeting of the Association any member of any committee shall be absent, the vacancy may be filled by the members of the committee present.

The Secretary of the Association shall be the Secretary of the Council.

XI.—The Committee on Publications shall also meet within one month after each Annual Meeting, at such time and place as the Chairman shall appoint.

XII.—Special meetings of any committee shall be held at such times and places as the Chairman thereof may appoint. Reasonable notice shall be given by him to each member by mail.

ANNUAL DUES.

XIII.—The Annual dues shall be payable at the Annual Meeting in advance. If any member neglect to pay them for any year at or before the next Annual Meeting, he shall cease to be a member. The Treasurer shall give notice of this by-law, within sixty days after each meeting, to all members in default.

PRESIDENT,
CORTLANDT PARKER,
Newark, New Jersey.

SECRETARY,
EDWARD OTIS HINKLEY,
No. 43 North Charles Street, Baltimore, Maryland.

TREASURER,
FRANCIS RAWLE,
No. 402 Walnut Street, Philadelphia, Pennsylvania.

EXECUTIVE COMMITTEE.
LUKE P. POLAND, *St. Johnsbury, Vermont*, CHAIRMAN.
SIMEON E. BALDWIN, *New Haven, Connecticut*.
WILLIAM ALLEN BUTLER, *New York, New York*.

EX OFFICIO.
EDWARD OTIS HINKLEY, SECRETARY.
FRANCIS RAWLE, TREASURER.

COUNCIL.

<i>Alabama,</i>	DAVID CLOPTON.
<i>Arkansas,</i>	M. M. COHN.
<i>Connecticut,</i>	JEREMIAH HALSEY.
<i>Delaware,</i>	ANTHONY HIGGINS.
<i>District of Columbia,</i>	J. HUBLEY ASHTON.
<i>Florida,</i>	CHARLES P. COOPER.
<i>Georgia,</i>	GEORGE A. MERCER.
<i>Illinois,</i>	E. B. SHERMAN.
<i>Indiana,</i>	JOSEPH A. S. MITCHELL.
<i>Iowa,</i>	GEORGE G. WRIGHT.
<i>Kentucky,</i>	J. W. STEVENSON.
<i>Louisiana,</i>	THOMAS J. SEMMES.
<i>Maryland,</i>	HENRY STOCKBRIDGE.
<i>Massachusetts,</i>	EDMUND H. BENNETT.
<i>Michigan,</i>	WILLIAM P. WELLS.
<i>Minnesota,</i>	HIRAM F. STEVENS.
<i>Missouri,</i>	JAMES O. BROADHEAD.
<i>Nebraska,</i>	CHARLES F. MANDERSON.
<i>New Hampshire,</i>	JOHN M. SHIRLEY.
<i>New Jersey,</i>	JACOB WEART.
<i>New York,</i>	CHARLES A. PEABODY.
<i>North Carolina,</i>	THOMAS B. KEOGH.
<i>Ohio,</i>	EDWIN P. GREEN.
<i>Pennsylvania,</i>	HENRY REED.
<i>Rhode Island,</i>	CHARLES S. BRADLEY.
<i>South Carolina,</i>	EDWARD McCRA DY, JR.
<i>Tennessee,</i>	BEDFORD M. ESTES.
<i>Texas,</i>	T. N. WAUL.
<i>Vermont,</i>	LUKE P. POLAND.
<i>Virginia,</i>	LEGH R. PAGE.
<i>West Virginia,</i>	CALEB BOGGESS.
<i>Wisconsin,</i>	JOHN W. CARY.

VICE-PRESIDENTS
AND
MEMBERS OF LOCAL COUNCILS.

ALABAMA.—Vice-President, D. S. TROY.

Local Council, WALTER L. BRAGG, LUTHER R.
SMITH, DAVID BUELL, GAYLORD B. CLARK.

ARKANSAS.—Vice-President, U. M. ROSE.

Local Council, JAMES C. TAPPAN, BENJAMIN T.
DU VAL.

CONNECTICUT.—Vice-President, ALVAN P. HYDE.

Local Council, LYMAN D. BREWSTER, JOHNSON T.
PLATT, WASHINGTON F. WILLCOX.

DELAWARE.—Vice-President, THOMAS F. BAYARD.

Local Council, IGNATIUS C. GRUBB.

DISTRICT OF COLUMBIA.—Vice-President, H. H. WELLS.

Local Council.—RICHARD T. MERRICK, NATHANIEL
WILSON.

FLORIDA.—Vice-President, EDWIN M. RANDALL.

Local Council.—CHARLES W. JONES, JOHN C.
COOPER.

GEORGIA.—Vice-President, L. N. WHITTLE.

Local Council, N. J. HAMMOND, CHARLES C. JONES,
Jr., R. F. LYON, WALTER S. CHISHOLM.

ILLINOIS.—Vice-President, C. C. BONNEY.

Local Council, CHARLES DUNHAM, GUSTAVE KOER-
NER, R. BIDDLE ROBERTS, ISAAC N. ARNOLD,
WILLIAM L. GROSS.

INDIANA.—Vice-President, BENJAMIN HARRISON.

Local Council, JOS. E. McDONALD, ROBERT S. TAYLOR, ABRAM W. HENDRICKS, AZRO DYER, THOMAS F. DAVIDSON.

IOWA.—Vice-President, GEORGE G. WRIGHT.

Local Council, OLIVER P. SHIRAS.

KENTUCKY.—Vice-President, WILLIAM PRESTON.

Local Council, JOHN W. STEVENSON, JOHN MASON BROWN.

LOUISIANA.—Vice-President, F. P. POCHÉ.

Local Council, CARLETON HUNT, THOMAS L. BAYNE, JOHN H. KENNARD.

MAINE.—Vice-President, NATHAN WEBB.

Local Council, F. A. WILSON, O. D. BAKER.

MARYLAND.—Vice-President, SKIPWITH WILMER.

Local Council, A. LEO KNOTT, RICHARD M. VENABLE, CHARLES J. BONAPARTE, JULIAN J. ALEXANDER.

MASSACHUSETTS.—Vice-President, GEORGE O. SHATTUCK.

Local Council, SYDNEY BARTLETT, CHARLES W. CLIFFORD, NATHANIEL W. LADD, DANIEL S. RICHARDSON.

MICHIGAN.—Vice-President, HENRY B. BROWN.

Local Council, THOMAS M. COOLEY, ROBERT P. TOMS, DON M. DICKINSON, O'BRIEN J. ATKINSON.

MINNESOTA.—Vice-President, GORDON E. COLE.

Local Council, REUBEN C. BENTON, JOHN A. LOVELY, HIRAM F. STEVENS.

MISSISSIPPI.—Vice-President, LOCK E. HOUSTON.

Local Council, R. O. REYNOLDS.

MISSOURI.—Vice-President, SHEPARD BARCLAY.

Local Council, HENRY HITCHCOCK, WARWICK HOUGH, EDWARD C. KEHR.

NEBRASKA.—Vice-President, JAMES M. WOOLWORTH.
Local Council, CHARLES F. MANDERSON.

NEW HAMPSHIRE.—Vice-President, WILLIAM S. LADD.
Local Council, CLINTON W. STANLEY, ALBERT S.
WAIT, HENRY B. ATHERTON.

NEW JERSEY.—Vice-President, ANTHONY Q. KEASBEY.
Local Council, WASHINGTON B. WILLIAMS, CHARLES
BORCHERLING, R. WAYNE PARKER.

NEW YORK.—Vice-President, JOHN F. DILLON.
Local Council, EVERETT P. WHEELER, BENJ. A.
WILLIS, ROBERT D. BENEDICT, WM. M. EVARTS,
N. C. MOAK, EDWARD F. BULLARD, JOHN K.
PORTER.

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Local Council, JAMES E. BOYD, JOHN N. STAPLES.

OHIO.—Vice-President, RUFUS KING.
Local Council, W. W. JOHNSON, RICHARD A. HAR-
RISON, HENRY S. NEAL, HENRY C. RANNEY.

PENNSYLVANIA.—Vice-President, GEORGE W. BIDDLE.
Local Council, HENRY GREEN, GEORGE SHIRAS, JR.,
HUGH M. NORTH, ROBERT E. MONAGHAN, WIL-
LIAM A. PORTER, ANDREW T. McCLINTOCK.

RHODE ISLAND.—Vice-President, WILLIAM P. SHEFFIELD.
Local Council, BENJAMIN F. THURSTON, ABRAHAM
PAYNE.

SOUTH CAROLINA.—Vice-President, HENRY E. YOUNG.
Local Council, C. H. SIMONTON, ROBERT W. BOYD.

TENNESSEE.—Vice-President, ANDREW ALLISON.
Local Council, JOHN M. GAUT, HENRY T. ELLETT,
EDMUND COOPER.

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JACOB WAELDER.

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Local Council, NORMAN PAUL, WILLIAM H. WALKER.

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Local Council, WILLIAM J. ROBERTSON, LEIGH R. PAGE.

WEST VIRGINIA.—Vice-President, EDWARD B. KNIGHT.

Local Council, JOHN A. HUTCHINSON, FRANK HEREFORD.

WISCONSIN.—Vice-President, SILAS U. PINNEY.

Local Council, WILLIAM F. VILAS, ALFRED L. CARY, EPHRAIM MARINER.

COMMITTEES.

ON JURISPRUDENCE AND LAW REFORM.

WILLIAM ALLEN BUTLER, New York, New York.
SIMEON E. BALDWIN, New Haven, Connecticut.
HENRY HITCHCOCK, St. Louis, Missouri.
GEORGE TUCKER BISPHAM, Philadelphia, Pennsylvania.
SKIPWITH WILMER, Baltimore, Maryland.

ON JUDICIAL ADMINISTRATION AND REMEDIAL PROCEDURE.

RUFUS KING, Cincinnati, Ohio.
GEORGE W. BIDDLE, Philadelphia, Pennsylvania.
EDWARD J. PHELPS, Burlington, Vermont.
RICHARD T. MERRICK, Washington, District of Columbia.
WALTER B. HILL, Macon, Georgia.

ON LEGAL EDUCATION AND ADMISSIONS TO THE BAR.

CARLETON HUNT, New Orleans, Louisiana.
HENRY STOCKBRIDGE, Baltimore, Maryland.
U. M. ROSE, Little Rock, Arkansas.
GEORGE HOADLY, Cincinnati, Ohio.
EDMUND H. BENNETT, Taunton, Massachusetts.

ON COMMERCIAL LAW.

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GEORGE A. MERCER, Savannah, Georgia.
JAMES T. MITCHELL, Philadelphia, Pennsylvania.
A. J. VANDERPOEL, New York, New York.
WILLIAM J. ROBERTSON, Charlottesville, Virginia.

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THOMAS M. COOLEY, Ann Arbor, Michigan.
JOHN W. STEVENSON, Covington, Kentucky.
JAMES O. BROADHEAD, St. Louis, Missouri.
JOHN E. WARD, New York, New York.
WILLIAM M. EVARTS, New York, New York.

ON PUBLICATIONS.

A. Q. KEASBEY, Newark, New Jersey.
CHARLES S. BRADLEY, Providence, Rhode Island.
FRANCIS RAWLE, Philadelphia, Pennsylvania.
ANDREW ALLISON, Nashville, Tennessee.
DANIEL ROBERTS, Burlington, Vermont.

ON GRIEVANCES.

J. RANDOLPH TUCKER, Lexington, Virginia.
JAMES S. PIRTLE, Louisville, Kentucky.
HENRY JACKSON, Atlanta, Georgia.
STEPHEN W. KELLOGG, Waterbury, Connecticut.
WASHINGTON B. WILLIAMS, Jersey City, New Jersey.

ON OBITUARIES.

EDWARD O. HINKLEY, Baltimore, Maryland.
EVERETT P. WHEELER, New York, New York.
HENRY HITCHCOCK, St. Louis, Missouri.

ALPHABETICAL LIST OF MEMBERS—1883-84.

ACKLEN, JOSEPH H.,	Franklin, Ia.
ADAMS, SAMUEL B.,	Savannah, Ga.
ADAMS, SHERMAN W.,	Hartford, Conn.
ALBERT, TALBOT J.,	Baltimore, Md.
ALDRICH, CHARLES H.,	Fort Wayne, Ind.
ALLEN, ROBERT, JR.,	Red Bank, N. J.
ALLEN, STILLMAN B.,	Boston, Mass.
ALEXANDER, JULIAN J.,	Baltimore, Md.
ALLISON, ANDREW,	Nashville, Tenn.
ANDERSON, CLIFFORD,	Macon, Ga.
APPLEBY, GEORGE F.,	Washington, D. C.
ARMSTRONG, WM. H.,	Williamsport, Pa.
ARNOLD, ISAAC N.,	Chicago, Ill.
ARNOLD, MICHAEL,	Philadelphia, Pa.
ASHTON, J. HUBLEY,	Washington, D. C.
ATHERTON, HENRY B.,	Nashua, N. H.
ATHERTON, THOMAS H.,	Wilkesbarre, Pa.
ATKINSON, O'BRIEN J.,	Port Huron, Mich.
AYER, B. F.,	Chicago, Ill.
BACON, AUGUSTUS O.,	Macon, Ga.
BAER, GEORGE F.,	Reading, Pa.
BACOT, T. W.,	Charleston, S. C.
BAKER, ASHLEY D. L.,	Gloversville, N. Y.
BAKER, FREDERICK A.,	Detroit, Mich.
BAKER, JOHN H.,	Goshen, Ind.
BAKER, ORVILLE D.,	Augusta, Ga.
BAKER, WILLIAM,	Toledo, O.
BALL, DANIEL H.,	Marquette, Mich.
BALDWIN, CHARLES C.,	Cleveland, O.
BALDWIN, G. W.,	Boston, Mass.
BALDWIN, HENRY, JR.,	Philadelphia, Pa.
BALDWIN, SIMEON E.,	New Haven, Conn.

BALLENGER, W. P.,	Galveston, Tex.
BARCLAY, SHEPARD,	St. Louis, Mo.
BARKER, THEODORE G.,	Charleston, S. C.
BARROW, POPE,	Athens, Ga.
BARTLETT, CHARLES L.,	Macon, Ga.
BARTLETT, SIDNEY,	Boston, Mass.
BATE, H. R.,	Covington, Tenn.
BAUSMAN, J. W. B.,	Lancaster, Pa.
BAYARD, THOMAS F.,	Wilmington, Del.
BAYNE, THOMAS L.,	New Orleans, La.
BEASTEN, CHARLES, JR.,	Baltimore, Md.
BELL, C. U.,	Lawrence, Mass.
BENEDICT, ROBERT D.,	New York, N. Y.
BENEDICT, W. S.,	New Orleans, La.
BENET, WILLIAM C.,	Abbeville, S. C.
BENJAMIN, M. W.,	Little Rock, Ark.
BENNETT, EDMUND H.,	Taunton, Mass.
BENTON, REUBEN C.,	Minneapolis, Minn.
BIDDLE, GEORGE W.,	Philadelphia, Pa.
BINGHAM, HARRY,	Littleton, N. H.
BISPHAM, GEORGE TUCKER,	Philadelphia, Pa.
BISHOP, ROBERT R.,	Boston, Mass.
BLACK, J. C.,	Danville, Ill.
BLACK, J. C. C.,	Augusta, Ga.
BLANC, SAMUEL P.,	New Orleans, La.
BOGGESE, CALEB,	Clarksburg, W. Va.
BONAPARTE, CHARLES J.,	Baltimore, Md.
BOND, S. R.,	Washington, D. C.
BONNEY, C. C.,	Chicago, Ill.
BORCHERLING, CHARLES,	Newark, N. J.
BOYD, JAMES E.,	Greensboro, N. C.
BOYD, ROBERT W.,	Darlington, S. C.
BRADLEY, CHARLES S.,	Providence, R. I.
BRAGG, WALTER L.,	Montgomery, Ala.
BRALEY, HENRY K.,	Fall River, Mass.
BREAUX, G. A.,	New Orleans, La.
BRECK, CHARLES DU PONT,	Scranton, Pa.
BRECKENRIDGE, SAMUEL M.,	St. Louis, Mo.
BRECKINRIDGE, WM. C. P.,	Lexington, Ky.
BREDIN, JAMES,	Butler, Pa.
BREWSTER, LYMAN D.,	Danbury, Conn.
BRICE, A. G.,	New Orleans, La.

BRIDGERS, JOHN L., JR.	Tarboro, N. C.
BRISTOW, BENJAMIN H.	New York, N. Y.
BROADHEAD, JAMES O.	St. Louis, Mo.
BROOKS, FRANCIS A.	Boston, Mass.
BROWN, HENRY B.	Detroit, Mich.
BROWN, JOHN C.	Pulaski, Tenn.
BROWN, JOHN MASON.	Louisville, Ky.
BROWN, SERANTIAN.	Baltimore, Md.
BRUNDAGE, A. R.	Wilkesbarre, Pa.
BRUSH, CHARLES H.	New York, N. Y.
BRYAN, JAMES W.	Covington, Ky.
BUCK, J. JAY.	Emporia, Kan.
BUCKNER, B. F.	Lexington, Ky.
BUELL, DAVID.	Greenville, Ala.
BULLARD, E. F.	Saratoga Springs, N. Y.
BULLOCK, A. G.	Worcester, Mass.
BURKE, STEVENSON.	Cleveland, O.
BURNETT, HENRY L.	New York, N. Y.
BURNHAM, HENRY E.	Manchester, N. H.
BUTLER, JOHN M.	Indianapolis, Ind.
BUTLER, WM. ALLEN.	New York, N. Y.
BUTLER, WM. ALLEN, JR.	New York, N. Y.
CAMPBELL, JAMES B.	Charleston, S. C.
CAMPBELL, JOHN A.	New Cumberland, W. Va.
CARBOLL, WILLIAM H.	Memphis, Tenn.
CARY, ALFRED L.	Milwaukee, Wis.
CARY, JOHN W.	Milwaukee, Wis.
CARY, MERBERT B.	Milwaukee, Wis.
CHANDLER, ALFRED D.	Boston, Mass.
CHARLTON, WALTER G.	Savannah, Ga.
CHEERINGTON, THOMAS.	Ironton, O.
CHISHOLM, WALTER S.	Savannah, Ga.
CLARK, GAYLORD B.	Mobile, Ala.
CLARK, JAMES OLIVER.	New York, N. Y.
CLARK, THOMAS ALLEN.	New York, N. Y.
CLEAVES, NATHAN.	Portland, Me.
CLIFFORD, CHARLES W.	New Bedford, Mass.
CLOFTON, DAVID.	Montgomery, Ala.
COHN, M. M.	Little Rock, Ark.
COLE, GORDON E.	Fairbault, Minn.
COLE, W. L.	Parkersburg, W. Va.
COOLEY, THOMAS M.	Ann Arbor, Mich.

COLLIER, M. DWIGHT,	St. Louis, Mo.
COLLINS, PATRICK A.,	Boston, Mass.
COLSTON, EDWARD,	Cincinnati, O.
COOPER, C. P.,	Jacksonville, Fla.
COOPER, EDMUND,	Shelbyville, Tenn.
COOPER, JOHN C.,	Jacksonville, Fla.
COOPER, WILLIAM F.,	Nashville, Tenn.
COWEN, JOHN K.,	Baltimore, Md.
COX, S. S.,	New York, N. Y.
CRAIGHEAD, S.,	Dayton, O.
CRAPO, WILLIAM W.,	New Bedford, Mass.
CRAWFORD, GEORGE L.,	Philadelphia, Pa.
CRAWFORD, W. L.,	Dallas, Tex.
CROSS, E. J. D.,	Baltimore, Md.
CROWELL, CHARLES E.,	New York, N. Y.
CULLOM, SHELBY M.,	Springfield, Ill.
CUMMING, JOSEPH B.,	Augusta, Ga.
CUNNINGHAM, HENRY C.,	Savannah, Ga.
CURRIER, FRANK D.,	E. Canaan, N. H.
CURTIS, BENJAMIN ROBBINS,	Boston, Mass.
CURTIS, JULIUS B.,	Stamford, Conn.
DARGAN, E. KEITH,	Darlington C. H., S. C.
DARLING, EDWARD P.,	Wilkesbarre, Pa.
DARLING, J. VAUGHAN,	Wilkesbarre, Pa.
DARLINGTON, JOSEPH J.,	Washington, D. C.
DAUGHERTY, M. A.,	Columbus, O.
DAVIDSON, THOMAS F.,	Covington, Ind.
DAVIDSON, WILLIAM A.,	Cincinnati, O.
DAVIE, GEORGE M.,	Louisville, Ky.
DAVIS, DAVID,	Bloomington, Ill.
DAVIS, JOHN J.,	Clarksburg, W. Va.
DAVISON, CHARLES A.,	New York, N. Y.
DEADY, M. P.,	Portland, Oregon.
DENT, THOMAS,	Chicago, Ill.
DENEGRE, GEORGE,	New Orleans, La.
DESTY, ROBERT,	St. Paul, Minn.
DICKINSON, DON M.,	Detroit, Mich.
DICKINSON, M. F., JR.,	Boston, Mass.
DICKINSON, S. MEREDITH,	Trenton, N. J.
DILLON, JOHN F.,	New York, N. Y.
DOUSHEIMER, WILLIAM,	New York, N. Y.
DU BIGNON, FLEMING G.,	Milledgeville, Ga.

DUDLEY, JAMES M.,	Johnstown, N. Y.
DUFFIELD, HENRY M.,	Detroit, Mich.
DUNHAM, CHARLES,	Geneseo, Ill.
DU VAL, BENJAMIN T.,	Fort Smith, Ark.
DYER, AZRO,	Evansville, Ind.
EATON, SHELBURNE B.,	New York, N. Y.
EARLE, WILLIAM E.,	Washington, D. C.
EDSALL, JAMES K.,	Chicago, Ill.
EDWARDS, B. S.,	Springfield, Ill.
ELLETT, HENRY T.,	Memphis, Tenn.
ELLMAKER, NATHANIEL,	Lancaster, Pa.
EMOTT, JAMES,	New York, N. Y.
ENDICOTT, WILLIAM C.,	Salem, Mass.
ENSIGN, JOSIAH D.,	Duluth, Minn.
ESTES, BEDFORD M.,	Memphis, Tenn.
EVARTS, WILLIAM M.,	New York, N. Y.
FAIRBANKS, CHARLES W.,	Indianapolis, Ind.
FALLIGANT, ROBERT,	Savannah, Ga.
FARRAR, EDGAR H.,	New Orleans, La.
FEIGHAN, JOHN W.,	Emporia, Kan.
FELLOWS, JOSEPH W.,	Manchester, N. H.
FENTRESS, JAMES,	Bolivar, Tenn.
FERGUSON, E. A.,	Cincinnati, O.
FISHBACK, W. P.,	Indianapolis, Ind.
FISHER, WILLIAM A.,	Baltimore, Md.
FLEMMING, JAMES,	Jersey City, N. J.
FORBUSH, GEORGE S.,	Boston, Mass.
FORCE, MANNING F.,	Cincinnati, O.
FOSTER, DWIGHT,	Boston, Mass.
FOX, AUSTEN G.,	New York, N. Y.
FOX, WILLIAM H.,	Taunton, Mass.
FRANKLIN, THOMAS E.,	Lancaster, Pa.
FRAYSER, R. DUDLEY,	Memphis, Tenn.
FRENCH, WILLIAM B.,	Boston, Mass.
FULLER, HENRY,	Westfield, Mass.
FULTON, MARSHALL,	Denton, Tex.
GALT, SMITH P.,	St. Louis, Mo.
GANTT, THOMAS T.,	St. Louis, Mo.
GARNETT, HENRY WISE,	Washington, D. C.
GARRARD, WILLIAM,	Savannah, Ga.
GARRETSON, A. Q.,	Jersey City, N. J.
GASTON, WILLIAM,	Boston, Mass.

GATES, Q. A.,	Wilkesbarre, Pa.
GAUT, JOHN M.,	Nashville, Tenn.
GILBERT, LYMAN D.,	Harrisburg, Pa.
GILLIS, JAMES A.,	Salem, Mass.
GILMORE, THOMAS,	New Orleans, La.
GOBLE, L. SPENCER,	Newark, N. J.
GOODWIN, FRANK,	Boston, Mass.
GORMAN, CHARLES E.,	Providence, R. I.
GOULD, A. P.,	Thomaston, Me.
GOULD, O. B.,	Winona, Minn.
GRESHAM, WALTER,	Galveston, Tex.
GRESHAM, WALTER Q.,	Indianapolis, Ind.
GRANGER, M. M.,	Zanesville, O.
GREEN, EDWIN P.,	Akron, O.
GREEN, HENRY,	Easton, Pa.
GREGORY, J. C.,	Madison, Wis.
GRIFFIN, LEVI T.,	Detroit, Mich.
GUNCKEL, LEWIS B.,	Dayton, O.
GRISWOLD, SENECA O.,	Cleveland, O.
GROESBECK, WILLIAM S.,	Cincinnati, O.
GROSS, JOSEPH P.,	Philadelphia, Pa.
GROSS, WILLIAM L.,	Springfield, Ill.
GRUBB, IGNATIUS C.,	Wilmington, Del.
GUTHRIE, GEORGE W.,	Pittsburg, Pa.
HAHN, WILLIAM J.,	Minneapolis, Minn.
HALE, MATTHEW,	Albany, N. Y.
HALL, JOHN J.,	Akron, O.
HALSEY, JEREMIAH,	Norwich, Conn.
HAMERSLEY, WILLIAM,	Hartford, Conn.
HAMILTON, ALEXANDER,	Petersburg, Va.
HAMILTON, GEORGE EARNEST,	Washington, D. C.
HAMILTON, JOHN M.,	Springfield, Ill.
HAMMOND, N. J.,	Atlanta, Ga.
HAMMOND, WILLIAM G.,	St. Louis, Mo.
HANDLEY, JOHN,	Scranton, Pa.
HANDY, JOHN H.,	Baltimore, Md.
HANNA, JOHN F.,	Washington, D. C.
HARRISON, BENJAMIN,	Indianapolis, Ind.
HARRISON, RICHARD A.,	Columbus, O.
HASKELL, THOMAS H.,	Portland, Me.
HATHEWAY, SIMON W.,	Boston, Mass.
HAY, MALCOLM,	Pittsburg, Pa.

HAYNES, DANIEL A.,	.	.	.	Dayton, O.
HEMENWAY, ALFRED,	.	.	.	Boston, Mass.
HEMPHILL, JOSEPH,	.	.	.	West Chester, Pa.
HENDERSON, J. B.,	.	.	.	St. Louis, Mo.
HENDRICKS, A. W.,	.	.	.	Indianapolis, Ind.
HENDRICKS, THOMAS A.,	.	.	.	Indianapolis, Ind.
HERBERT, JOHN W., JR.,	.	.	.	Jersey City, N. J.
HEREFORD, FRANK,	.	.	.	Union, W. Va.
HEVERIN, JAMES H.,	.	.	.	Philadelphia, Pa.
HIGGINS, ANTHONY,	.	.	.	Wilmington, Del.
HILL, WALTER B.,	.	.	.	Macon, Ga.
HINES, C. C.,	.	.	.	Indianapolis, Ind.
HINKLEY, EDWARD OTIS,	.	.	.	Baltimore, Md.
HINCKLEY, LYMAN G.,	.	.	.	Chelsea, Vt.
HITCHCOCK, HENRY,	.	.	.	St. Louis, Mo.
HODLEY, GEORGE,	.	.	.	Cincinnati, O.
HODGE, NOAH,	.	.	.	Akron, O.
HOFFMAN, CHARLES W.,	.	.	.	Washington, D. C.
HOLMES, GEORGE F.,	.	.	.	Portland, Me.
HOOKE, DAVID G.,	.	.	.	Milwaukee, Wis.
HORD, OSCAR B.,	.	.	.	Indianapolis, Ind.
HORNER, JOHN J.,	.	.	.	Helena, Ark.
HOUGH, WARWICK,	.	.	.	Jefferson City, Mo.
HOUE, GEORGE W.,	.	.	.	Dayton, O.
HOUSTON, LOCK E.,	.	.	.	Aberdeen, Miss.
HOWE, ARCHIBALD M.,	.	.	.	Boston, Mass.
HOWE, W. W.,	.	.	.	New Orleans, La.
HOWRY, CHARLES B.,	.	.	.	Oxford, Miss.
HUBBARD, CHARLES EUSTIS,	.	.	.	Boston, Mass.
HUDD, THOMAS R.,	.	.	.	Green Bay, Wis.
HUEY, SAMUEL B.,	.	.	.	Philadelphia, Pa.
HUNT, CARLETON,	.	.	.	New Orleans, La.
HURD, FRANCIS W.,	.	.	.	Boston, Mass.
HUTCHINS, WALDO,	.	.	.	New York, N. Y.
HUTCHINSON, JOHN A.,	.	.	.	Parkersburg, W. Va.
HYDE, ALVAN P.,	.	.	.	Hartford, Conn.
ISAACS, M. S.,	.	.	.	New York, N. Y.
JACKSON, HENRY,	.	.	.	Atlanta, Ga.
JENKINS, JAMES G.,	.	.	.	Milwaukee, Wis.
JEWETT, HUGH J.,	.	.	.	New York, N. Y.
JOHNSON, EDGAR M.,	.	.	.	Cincinnati, O.
JOHNSON, WILLIAM W.,	.	.	.	Ironton, O.

JOHNSON, WILLIAM E.,	Woodstock, Vt.
JOHNSTON, JAMES M.,	Washington, D. C.
JOHNSTON, SANDERS W.,	Washington, D. C.
JONES, CHARLES C., JR.,	Augusta, Ga.
JONES, CHARLES W.,	Pensacola, Fla.
JONES, ISAAC D.,	Baltimore, Md.
JONES, LEONARD A.,	Boston, Mass.
JORDAN, ISAAC M.,	Cincinnati, O.
JUDSON, FREDERICK N.,	St. Louis, Mo.
KEASBEY, ANTHONY Q.,	Newark, N. J.
KEASBEY, GEORGE M.,	Newark, N. J.
KEHR, EDWARD C.,	St. Louis, Mo.
KELLOGG, STEPHEN W.,	Waterbury, Conn.
KENNARD, JOHN H.,	New Orleans, La.
KENT, CHARLES A.,	Detroit, Mich.
KEOGH, THOMAS B.,	Greensboro, N. C.
KERNAN, FRANCIS,	Utica, N. Y.
KING, RUFUS,	Cincinnati, O.
KINGSBURY, FREDERICK J.,	Waterbury, Conn.
KINNEY, THOMAS T.,	Newark, N. J.
KIRCHNER, OTTO,	Detroit, Mich.
KNIGHT, EDWARD B.,	Charleston, W. Va.
KNOTT, A. LEO,	Baltimore, Md.
KOERNER, GUSTAVE,	Belleville, Ill.
KOHLER, JACOB A.,	Akron, O.
KRUTTSCHNITT, ERNEST B.,	New Orleans, La.
KULP, GEORGE B.,	Wilkesbarre, Pa.
LADD, NATH. W.,	Boston, Mass.
LADD, WILLIAM S.,	Lancaster, N. H.
LAMBERTON, C. L.,	Wilkesbarre, Pa.
LANCASTER, CHARLES C.,	Washington, D. C.
LATHROP, GARDINER,	Kansas City, Mo.
LATROBE, JOHN H. B.,	Baltimore, Md.
LAWRENCE, L. L.,	Burlington, Vt.
LAWTON, ALEXANDER R.,	Savannah, Ga.
LEAR, GEORGE,	Doylestown, Pa.
LEES, CHARLES C.,	New York, N. Y.
LEGENDRE, JAMES,	New Orleans, La.
LEIGH, JOSEPH E.,	Columbus, Miss.
LEVI, ALBERT L.,	Minneapolis, Minn.
LIBBY, CHARLES F.,	Portland, Me.
LISTER, CHARLES C.,	Philadelphia, Pa.

LITTLE, WILLIAM E.,	Tunkhannock, Pa.
LIVINGSTON, J. B.,	Lancaster, Pa.
LOGAN, THOMAS A.,	Cincinnati, O.
LOVELY, JOHN A.,	Albert Lea, Minn.
LUCAS, SOLOMON,	Norwich, Conn.
LUCKENBACH, W. D.,	Allentown, Pa.
LYON, R. F.,	Macon, Ga.
MACFARLAND, W. W.,	New York, N. Y.
MACKALL, WILLIAM W., JR.,	Savannah, Ga.
MACVEAGH, WAYNE,	Philadelphia, Pa.
MADILL, GEORGE A.,	St. Louis, Mo.
MANDERSON, CHARLES F.,	Omaha, Neb.
MARINER, EPHRAIM,	Milwaukee, Wis.
MARSH, FAYETTE,	Stillwater, Minn.
MARSHALL, JOSHUA N.,	Lowell, Mass.
MARSHALL, CHARLES,	Baltimore, Md.
MARSTON, GILMAN,	Exeter, N. H.
MARSTON, GEORGE,	New Bedford, Mass.
MASON, EDWARD G.,	Chicago, Ill.
MASON, JAMES,	Cleveland, O.
MASON, JOHN T. (JOHN T. MASON, R.),	Baltimore, Md.
MATHEWS, ALBERT,	New York, N. Y.
MATTHEWS, STANLEY,	Cincinnati, O.
MEDDAUGH, ELIJAH W.,	Detroit, Mich.
MELDRIM, P. W.,	Savannah, Ga.
MELoy, WILLIAM A.,	Washington, D. C.
MERCER GEORGE A.,	Savannah, Ga.
MERCER, GEORGE G.,	Philadelphia, Pa.
MERRICK, EDWIN T.,	New Orleans, La.
MERRICK, RICHARD T.,	Washington, D. C.
METZGER, THOMAS B.,	Allentown, Pa.
MERWIN, ELIAS,	Boston, Mass.
MILLER, FRANK H.,	Augusta, Ga.
MILLER, H. C.,	New Orleans, La.
MILLER, N. DU BOIS,	Philadelphia, Pa.
MITCHELL, JAMES T.,	Philadelphia, Pa.
MITCHELL, JOHN M.,	Concord, N. H.
MITCHELL, JOSEPH A. S.,	Goshen, Ind.
MOAK, N. C.,	Albany, N. Y.
MONAGHAN, ROBERT E.,	West Chester, Pa.
MOORE, JOHN M.,	Little Rock, Ark.
MOORE, GEORGE F.,	Montgomery, Ala.

MOORE, J. Z.,	Owensboro, Ky.
MOORMAN, H. C.,	Somerville, Tenn.
MORGAN, ROBERT J.,	Memphis, Tenn.
MORRIS, M. F.,	Washington, D. C.
MORRIS, S. W.,	Ironton, O.
MORSE, A. PORTER,	Washington, D. C.
MOULTON, S. W.,	Shelbyville, Ill.
MUNFORD, JAMES E.,	St. Louis, Mo.
MUNGER, WARREN,	Dayton, O.
MONROE, WILLIAM A.,	Boston, Mass.
MURPHY, D. F.,	Washington, D. C.
MURPHY, THEODORE D.,	Woodstock, Ill.
MUZZEY, HENRY W.,	Boston, Mass.
MYERS, JAMES J.,	Boston, Mass.
MCCALER, E. HOWARD,	New Orleans, La.
MCCAMMON, JOSEPH K.,	Washington, D. C.
MCCARTER, THOMAS N.,	Newark, N. J.
MCCARTNEY, JAMES,	Springfield, Ill.
MCCINTOCK, ANDREW T.,	Wilkesbarre, Pa.
MCCINTOCK, W. T.,	Chillicothe, O.
MCCRADY, EDWARD, JR.,	Charleston, S. C.
MCCLELLUGH, JOHN G.,	N. Bennington, Vt.
MCDONALD, JOSEPH E.,	Indianapolis, Ind.
McFARLAND, BAXTER,	Aberdeen, Miss.
McFARLAND, L. B.,	Memphis, Tenn.
McNEAL, ALBERT T.,	Bolivar, Tenn.
NASH, STEPHEN P.,	New York, N. Y.
NEBEKER, LUCAS,	Covington, Ind.
NELSON, HOMER A.,	Poughkeepsie, N. Y.
NIGEL, DELANCEY,	New York, N. Y.
NOBLE, JOHN W.,	St. Louis, Mo.
NORTH, E. D.,	Lancaster, Pa.
NORTH, HUGH M.,	Columbia, Pa.
OLMSTEAD, AARON B.,	Saratoga Springs, N. Y.
ORR, J. A.,	Columbus, O.
OUTERBRIDGE, ALBERT A.,	Philadelphia, Pa.
OVIATT, EDWARD,	Akron, O.
OWENS, GEORGE W.,	Savannah, Ga.
PAGE, HENRY F.,	Circleville, O.
PAGE, LECH R.,	Richmond, Va.
PALMER, HENRY W.,	Wilkesbarre, Pa.
PALMER, JOHN M.,	Springfield, Ill.

PARDEE, DON A.,	New Orleans, La.
PARDEE, HENRY E.,	New Haven, Conn.
PARKER, ALTON B.,	Kingston, N. Y.
PARKER, AMASA J.,	Albany, N. Y.,
PARKER, CORTLANDT,	Newark, N. J.
PARKER, R. WAYNE,	Newark, N. J.
PATTERSON, C. STUART,	Philadelphia, Pa.
PAUL, NORMAN,	Woodstock, Vt.
PAYNE, ABRAHAM,	Providence, R. I.
PEABODY, CHARLES A.,	New York, N. Y.
PEABODY, CHARLES A., JR.,	New York, N. Y.
PECKHAM, FRANCIS B.,	Newport, R. I.
PENNYPACKER, CHARLES H.,	West Chester, Pa.
PENNYPACKER, SAMUEL W.,	Philadelphia, Pa.
PERKINS, SAMUEL C.,	Philadelphia, Pa.
PERRY, JOHN H.,	Southport, Conn.
PETTIT, SILAS W.,	Philadelphia, Pa.
PHELPS, EDWARD J.,	Burlington, O.
PHELPS, WM. WALTER,	New York, N. Y.
PHILLIPS, GILBERT W.,	Putnam, Conn.
PIERCE, JAMES O.,	Memphis, Tenn.
PIKE, AUSTIN F.,	Franklin, N. H.
PINNEY, SILAS U.,	Madison, Wis.
PIRTLE, JAMES S.,	Louisville, Ky.
PLATT, JOHNSTON T.,	New Haven, Conn.
POCHÉ, F. P.,	St. James, La.
POLAND, LUKE P.,	St. Johnsbury, Vt.
POND, ASHLEY,	Detroit, Mich.
PORTER, JOHN K.,	New York, N. Y.
PORTER, WILLIAM A.,	Philadelphia, Pa.
PRESTON, WILLIAM,	Lexington, Ky.
PRICE, J. SERGEANT,	Philadelphia, Pa.
PRICHARD, FRANK P.,	Philadelphia, Pa.
PRIME, RALPH E.,	Yonkers, N. Y.
PROUT, JOHN,	Rutland, Vt.
PRYOR, ROGER A.,	Brooklyn, N. Y.
PUTNAM, HENRY W.,	Boston, Mass.
RANDALL, E. M.,	Jacksonville, Fla.
RANDOLPH, JOSEPH F.,	Jersey City, N. J.
RANNEY, HENRY C.,	Cleveland, O.
RANNEY, RUFUS P.,	Cleveland, O.
RAWLE, FRANCIS,	Philadelphia, Pa.

RAWLE, WM. HENRY,	Philadelphia, Pa.
REED, HENRY,	Philadelphia, Pa.
REYNOLDS, R. O.,	Aberdeen, Miss.
REYNOLDS, SAMUEL H.,	Lancaster, Pa.
RICHARDSON, DANIEL S.,	Lowell, Mass.
RICHARDSON, GEORGE F.,	Lowell, Mass.
RICHEY, AUGUSTUS G.,	Trenton, N. J.
RIGGS, JAMES M.,	Winchester, Ill.
ROBB, SAMUEL,	Philadelphia, Pa.
ROBERTS, DANIEL,	Burlington, Vt.
ROBERTS, JOSEPH K., JR.,	Upper Marlboro, Md.
ROBERTS, R. BIDDLE,	Chicago, Ill.
ROBERTSON, A. H.,	Baltimore, Md.
ROBERTSON, WILLIAM J.,	Charlottesville, Va.
ROGERS, GEORGE W.,	Norristown, Pa.
ROGERS, SHERMAN S.,	Buffalo, N. Y.
ROMEYN, THEODORE,	Detroit, Mich.
ROSE, U. M.,	Little Rock, Ark.
RUSSELL, ALFRED,	Detroit, Mich.
RUSSELL, WILLIAM G.,	Boston, Mass.
RUSSELL, W. H. H.,	New York, N. Y.
RUSSELL, TALCOTT H.,	New Haven, Conn.
SANBORN, JOHN B.,	St. Paul, Minn.
SANBORN, WALTER H.,	St. Paul, Minn.
SANDERS, DALLAS,	Philadelphia, Pa.
SCHENCK, ABRAM V.,	New Brunswick, N. J.
SCHOONMAKER, AUGUSTUS, JR.,	Kingston, N. Y.
SCOTT, C. S.,	Lexington, Ky.
SCUDDER, HENRY J.,	New York, N. Y.
SEARLES, JASPER N.,	Stillwater, Minn.
SEARS, PHILIP H.,	Boston, Mass.
SEIBERT, W. N.,	New Bloomfield, Pa.
SELDEN, JOHN,	Washington, D. C.
SEMMES, THOMAS J.,	New Orleans, La.
SEYMOUR, EDWARD W.,	Litchfield, Conn.
SHACK, FERDINAND,	New York, N. Y.
SHARP, GEORGE M.,	Baltimore, Md.
SHARP, ISAAC S.,	Philadelphia, Pa.
SHATTUCK, GEORGE O.,	Boston, Mass.
SHAW, R. K.,	Marietta, O.
SHAW, WILLIAM G.,	Burlington, Vt.
SHEFFIELD, WILLIAM P.,	Newport, R. I.

SHEPARD, ELLIOTT F.	New York, N. Y.
SHERMAN, E. B.	Chicago, Ill.
SHUPMAN, J. G.	Belvidere, N. J.
SHUPPEN, JOSEPH	St. Louis, Mo.
SHIRAS, GEORGE, JR.	Pittsburg, Pa.
SHIRAS, OLIVER P.	Dubuque, Ia.
SHIRLEY, JOHN M.	Andover, N. H.
SHORMAKER, L. D.	Wilkesbarre, Pa.
SHORMAKER, MURRAY C.	Cincinnati, O.
SHOSTON, C. H.	Charleston, S. C.
SIMS, W. H.	Columbus, Miss.
SLAYMAKER, ADAM	Lancaster, Pa.
SMALL, ALBERT	Hagerstown, Md.
SMALLEY, B. B.	Burlington, Vt.
SMITH, CHASENEY	Boston, Mass.
SMITH, HORACE E.	Albany, N. Y.
SMITH, LUTHER R.	Mount Sterling, Ala.
SMITH, WALTER GEORGE	Philadelphia, Pa.
SMYTHE, AUGUSTINE T.	Charleston, S. C.
SNEED, JOHN L. T.	Memphis, Tenn.
SOMMERVILLE, J. B.	Wellisburg, W. Va.
SOUTHERD, CHARLES B.	Boston, Mass.
SPATLING, JOHN	Boston, Mass.
SPRAGUE, E. C.	Buffalo, N. Y.
SPEER, GILBERT M., JR.	New York, N. Y.
STANTLEY, CLINTON W.	Manchester, N. H.
STANTON, LEWIS E.	Hartford, Conn.
STAPLES, JOHN N.	Greensboro, N. C.
STEEL, THOMAS	Ripley, Tenn.
STERNE, SIMON	New York, N. Y.
STEINSON, CHARLES P.	Rangor, Me.
STEVENS, GEORGE	Lowell, Mass.
STEVENS, HIRSH F.	St. Paul, Minn.
STEVENSON, JOHN W.	Covington, Ky.
STEWART, JOHN	Chambersburg, Pa.
STEWART, W. F. HAY	York, Pa.
STERNENY, ALBERT	New York, N. Y.
STILLWELL, L.	Osage Mission, Kan.
STOCKBRIDGE, HENRY	Baltimore, Md.
STOCKDALE, F. S.	Chico, Tex.
STORRY, MOOREHEAD	Boston, Mass.
STURGEON, JAMES J.	Boston, Mass.

STILES, EMERY A.,	Chicago, Ill.
STREET, ROBERT G.,	Galveston, Tex.
STREET, A. A.,	Portland, Me.
STERGES, E. B.,	Seranton, Pa.
SULLIVAN, ALGERNON S.,	New York, N. Y.
SWIFT, M. G. B.,	Fall River, Mass.
TAPPAN, JAMES C.,	Helena, Ark.
TAYLOR, JOHN D.,	New York, N. Y.
TAYLOR, R. S.,	Fort Wayne, Ind.
TEBBS, FREDERICK H.,	Newark, N. J.
THOMSON, SEYMOUR D.,	St. Louis, Mo.
THORNTON, A. R.,	Lexington, Ky.
THURSTON, BENJAMIN F.,	Providence, R. I.
TILWENT, P. O.,	Helena, Ark.
TODD, A. J.,	New York, N. Y.
TOMPKINS, HENRY B.,	Atlanta, Ga.
TOMS, ROBERT P.,	Detroit, Mich.
TORREY, JAY L.,	St. Louis, Mo.
TOWNSEND, WASHINGTON,	West Chester, Pa.
TOWNSEND, WILLIAM K.,	New Haven, Conn.
TOY, D. S.,	Montgomery, Ala.
TRABUE, E. F.,	Louisville, Ky.
THREADWELL, JOHN P.,	Boston, Mass.
TRUMBULL, LYMAN,	Chicago, Ill.
TUCK, SOMERVILLE P.,	New York, N. Y.
TUCKER, J. RANDOLPH,	Lexington, Va.
TUPPER, A. P.,	Middleboro, Vt.
TUTHILL, RICHARD S.,	Chicago, Ill.
UPSON, WILLIAM H.,	Akron, O.
USHER, EDWARD PRESTON,	Boston, Mass.
VANDERBIL, A. J.,	New York, N. Y.
VAUX, RICHARD,	Philadelphia, Pa.
VENABLE, RICHARD M.,	Baltimore, Md.
VILAS, WILLIAM F.,	Madison, Wis.
VREDENBURGH, JAMES B.,	Jersey City, N. J.
YROOM, GARRET D. W.,	Trenton, N. J.
WADDELL, WILLIAM B.,	West Chester, Pa.
WAELDER, JACOB,	San Antonio, Tex.
WAGNER, SAMUEL,	Philadelphia, Pa.
WAIT, ALBERT S.,	Newport, N. H.
WALKER, CHARLES J.,	Detroit, Mich.
WALKER, SAMUEL P.,	Memphis, Tenn.

WALKER, W. H.,	Ludlow, Vt.
WARD, JOHN E.,	New York, N. Y.
WARNER, JOSEPH B.,	Boston, Mass.
WATERMAN, A. N.,	Chicago, Ill.
WATROUS, GEORGE H.,	New Haven, Conn.
WAUL, T. N.,	Galveston, Tex.
WEADOCK, THOMAS A. E.,	Bay City, Mich.
WEAHT, JACOB,	Jersey City, N. J.
WEHR, NATHAN,	Portland, Me.
WEENS, WILLIAM R.,	Newark, N. J.
WEOG, DAVID S.,	Milwaukee, Wis.
WELLS, H. H.,	Washington, D. C.
WELSH, WILLIAM P.,	Detroit, Mich.
WEST, CHARLES N.,	Savannah, Ga.
WEST, C. S.,	Austin, Tex.
WEST, MAHLON R.,	Hartford, Conn.
WICKLER, EVERETT P.,	New York, N. Y.
WHITFIELD, F. E.,	Corinth, Miss.
WHITTLE, L. N.,	Macon, Ga.
WILLARD, EDWARD N.,	Scranton, Pa.
WILCOX, W. F.,	Deep River, Conn.
WILLIAMS, EDWARD CALVIN,	Baltimore, Md.
WILLIAMS, WASHINGTON R.,	Jersey City, N. J.
WILLIE, A. H.,	Galveston, Tex.
WILLIS, BENJAMIN A.,	New York, N. Y.
WILLISTON, W. C.,	Redwing, Minn.
WILLSON, A. E.,	Louisville, Ky.
WILMER, SKIPWITH,	Baltimore, Md.
WINSLOW, JOHN,	New York, N. Y.
WILSON, F. A.,	Bangor, Me.
WILSON, JOHN R.,	Indianapolis, Ind.
WILSON, NATHANIEL,	Washington, D. C.
WILSON, THOMAS,	Winona, Minn.
WILSON, WILLIAM C.,	Lafayette, Ind.
WILTRANK, WILLIAM W.,	Philadelphia, Pa.
WINKLER, FREDERICK C.,	Milwaukee, Wis.
WITHEROW, JAMES E.,	St. Louis, Mo.
WOLVERTON, SIMON P.,	Sunbury, Pa.
WOOD, R. H.,	Bolivar, Tenn.
WOODRUFF, GEORGE M.,	Litchfield, Conn.
WOODRUFF, ROBERT S.,	Trenton, N. J.
WOODWARD, CHARLES F.,	Bangor, Me.

ALPHABETICAL LIST OF MEMBERS.

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WOODWARD, STANLEY,	Wilkesbarre, Pa.
WOOLWORTH, J. M.,	Omaha, Neb.
WRIGHT, GEORGE G.,	Des Moines, Ia.
YOUNG, EDMOND S.,	Dayton, O.
YOUNG, GEORGE B.,	St. Paul, Minn.
YOUNG, HENRY E.,	Charleston, S. C.

MEMBERS—AUGUST, 1883-1884.

ALABAMA.

BRAGG, WALTER L.,	Montgomery.
B'ELL, DAVID,	Greenville.
CLARK, GAYLORD B.,	Mobile.
CLIFTON, DAVID,	Montgomery.
MOORE, GEORGE F.,	Montgomery.
SMITH, LUTHER R.,	Mount Sterling.
TEBY, D. S.,	Montgomery.

ARKANSAS.

BENJAMIN, M. W.,	Little Rock.
COHN, M. M.,	Little Rock.
DE VAL, BENJAMIN T.,	Fort Smith.
HOBBS, JOHN J.,	Helena.
MOORE, JOHN M.,	Little Rock.
ROSE, U. M.,	Little Rock.
TAPPAN, JAMES C.,	Helena.
THWEATT, P. O.,	Helena.

CONNECTICUT.

ADAMS, SHEPHERD W.,	Hartford.
BALDWIN, SIMON E.,	New Haven.
BREWSTER, LYMAN D.,	Danbury.
CURTIS, JULIUS B.,	Stamford.
HANDELSLEY, WILLIAM,	Hartford.
HALSEY, JEREMIAH,	Norwich.
HYDE, ALVAN P.,	Hartford.
KELLOGG, STEPHEN W.,	Waterbury.
KINGSBURY, FREDERICK J.,	Waterbury.
LUCAS, SOLOMON,	Norwich.
PARRISH, HENRY E.,	New Haven.
PERRY, JOHN H.,	Southport.
PHILLIPS, GILBERT W.,	Putnam.
PLATT, JOHNSON T.,	New Haven.
RUSSELL, TALCOTT H.,	New Haven.

CONNECTICUT—Continued.

SEYMOUR, EDWARD W.,	Litchfield.
STANTON, LEWIS E.,	Hartford.
TOWNSEND, WILLIAM K.,	New Haven.
WATKINS, GEORGE H.,	New Haven.
WEST, MARION R.,	Hartford.
WILSON, W. F.,	Deep River.
WOODRUFF, GEORGE M.,	Litchfield.

DELAWARE.

DAYARD, THOMAS F.,	Wilmington.
GEYER, IGNATIUS C.,	Wilmington.
HIGGINS, ANTHONY,	Wilmington.

DISTRICT OF COLUMBIA.

APPLEBY, GEORGE F.,	Washington.
AMSTON, J. HURLEY,	Washington.
BOND, S. R.,	Washington.
DARLINGTON, JOSEPH J.,	Washington.
EARLE, WILLIAM E.,	Washington.
GARNETT, HENRY WIRE,	Washington.
HAMILTON, GEORGE EARNEST,	Washington.
HANNA, JOHN F.,	Washington.
HOFFMAN, CHARLES W.,	Washington.
JOHNSTON, JAMES M.,	Washington.
JOHNSTON, SANDERS W.,	Washington.
LANCASTER, CHARLES C.,	Washington.
MCCAMMON, JOSEPH K.,	Washington.
MELoy, WILLIAM A.,	Washington.
MERRICK, RICHARD T.,	Washington.
MORRIS, M. F.,	Washington.
MORSE, A. PORTER,	Washington.
MURPHY, D. F.,	Washington.
SELDEN, JOHN,	Washington.
WELLS, H. H.,	Washington.
WILSON, NATHANIEL,	Washington.

FLORIDA.

COOPER, C. P.,	Jacksonville.
COOPER, JOHN C.,	Jacksonville.
JONES, CHARLES W.,	Pensacola.
RANDALL, F. M.,	Jacksonville.

GEORGIA.

ADAMS, SAMUEL B.,	Savannah.
ANDERSON, CLIFFORD,	Macon.
BACON, AUGUSTUS O.,	Macon.
BARDOW, POPE,	Athens.
BARTLETT, CHARLES L.,	Macon.
BLACK, J. C. C.,	Augusta.
CHARLTON, WALTER G.,	Savannah.
CHISHOLM, WALTER S.,	Savannah.
CUMMING, JOSEPH B.,	Augusta.
CUNNINGHAM, HENRY C.,	Savannah.
DU BOINON, FLEMING G.,	Milledgeville.
FALLIGANT, ROBERT,	Savannah.
GARRARD, WILLIAM,	Savannah.
HAMMOND, N. J.,	Atlanta.
HILL, WALTER B.,	Macon.
JACKSON, HENRY,	Atlanta.
JONES, CHARLES C., JR.,	Augusta.
LAWTON, ALEXANDER R.,	Savannah.
LYON, R. F.,	Macon.
MACKALL, WILLIAM W., JR.,	Savannah.
MELDRUM, P. W.,	Savannah.
MERCH, GEORGE A.,	Savannah.
MILLER, FRANK H.,	Augusta.
OWENS, GEORGE W.,	Savannah.
TOMPKINS, HENRY B.,	Atlanta.
WEST, CHARLES N.,	Savannah.
WHITTLE, L. N.,	Macon.

ILLINOIS.

ARNOLD, ISAAC N.,	Chicago.
AYER, B. F.,	Chicago.
BLACK, J. C.,	Danville.
BOSNEY, C. C.,	Chicago.
CYLLON, SHELBY M.,	Springfield.
DAVIS, DAVID,	Bloomington.
DENT, THOMAS,	Chicago.
DUNHAM, CHARLES,	Geneseo.
EDRALL, JAMES K.,	Chicago.
EDWARDS, B. S.,	Springfield.
GROSS, WILLIAM L.,	Springfield.
HAMILTON, JOHN M.,	Springfield.

ILLINOIS--Continued.

KOERNER, GUSTAVE,	Belleville.
MASON, EDWARD G.,	Chicago.
MCCARTNEY, JAMES,	Springfield.
*MOULTON, S. W.,	Shelbyville.
MURPHY, THEODORE D.,	Woodstock.
ORENDORFF, ALFRED,	Springfield.
PALMER, JOHN M.,	Springfield.
RIGGS, JAMES M.,	Winchester.
ROBERTS, R. BIDDLE,	Chicago.
SHERMAN, E. B.,	Chicago.
STORRS, EMERY A.,	Chicago.
TRUMBULL, LYMAN,	Chicago.
TUTHILL, RICHARD S.,	Chicago.
WATERMAN, A. N.,	Chicago.

INDIANA.

ALDRICH, CHARLES H.,	Fort Wayne.
BAKER, JOHN H.,	Goshen.
BUTLER, JOHN M.,	Indianapolis.
DAVIDSON, THOMAS F.,	Covington.
DYER, AZRO,	Evansville.
* FAIRBANKS, CHARLES W.,	Indianapolis.
FISHBACK, W. P.,	Indianapolis.
GRESHAM, WALTER Q.,	Indianapolis.
HARRISON, BENJAMIN,	Indianapolis.
HENDRICKS, A. W.,	Indianapolis.
HENDRICKS, THOMAS A.,	Indianapolis.
HINES, C. C.,	Indianapolis.
HORD, OSCAR B.,	Indianapolis.
MCDONALD, JOSEPH E.,	Indianapolis.
MITCHELL, JOSEPH A. S.,	Goshen.
NEBEKER, LUCAS,	Covington.
TAYLOR, R. S.,	Fort Wayne.
WILSON, JOHN R.,	Indianapolis.
WILSON, WILLIAM C.,	Lafayette.

IOWA.

SHIRAS, OLIVER P.,	Dubuque.
WRIGHT, GEORGE G.,	Des Moines.

KANSAS.

BOCK, J. JAY,	Emporia.
FRIGMAN, JOHN W.,	Emporia.
STILLWELL, L.,	Osage Mission.

KENTUCKY.

BROCKENRIDGE, WM. C. P.,	Lexington.
BROWN, JOHN MARSH,	Louisville.
BRYAN, JAMES W.,	Covington.
BUCKNER, B. F.,	Lexington.
DAVIS, GEORGE M.,	Louisville.
MOORE, J. Z.,	Owensboro.
PIRTLE, JAMES S.,	Louisville.
PRISTON, WILLIAM,	Lexington.
SCOTT, C. S.,	Lexington.
STEVENSON, JOHN W.,	Covington.
THOMSON, A. R.,	Lexington.
TRAHR, E. F.,	Louisville.
WILSON, A. E.,	Louisville.

LOUISIANA.

ACKLEN, JOSEPH H.,	Franklin.
BAYNE, THOMAS L.,	New Orleans.
BENEDICT, W. S.,	New Orleans.
BLANCH, SAMUEL P.,	New Orleans.
BREAU, G. A.,	New Orleans.
BREE, A. G.,	New Orleans.
DENEGRE, GEORGE,	New Orleans.
FAIRBIE, EDGAR H.,	New Orleans.
GILMORE, THOMAS,	New Orleans.
HOWE, W. W.,	New Orleans.
HUNT, CHARLETON,	New Orleans.
KENNARD, JOHN H.,	New Orleans.
KREUTSCHMANN, ERNEST R.,	New Orleans.
LEGENDRE, JAMES,	New Orleans.
M'CALEER, E. HOWARD,	New Orleans.
MERRICK, EDWIN T.,	New Orleans.
MILLER, H. C.,	New Orleans.
PARDUE, DON A.,	New Orleans.
POWELL, F. P.,	St. James.
SEMMES, THOMAS J.,	New Orleans.

MAINE.

BAKER, ORVILLE D.,	Augusta.
CLEAVES, NATHAN,	Portland.
GOULD, A. P.,	Thomaston.
HASKELL, THOMAS H.,	Portland.
HOLMES, GEORGE F.,	Portland.
LIBBY, CHARLES F.,	Portland.
STETSON, CHARLES P.,	Bangor.
STROUT, A. A.,	Portland.
WEBB, NATHAN,	Portland.
WILSON, F. A.,	Bangor.
WOODWARD, CHARLES F.,	Bangor.

MARYLAND.

ALBERT, TALBOT J.,	Baltimore.
ALEXANDER, JULIAN J.,	Baltimore.
BEASTEN, CHARLES, JR.,	Baltimore.
BONAPARTE, CHARLES J.,	Baltimore.
BROWN, SEBASTIAN,	Baltimore.
COWEN, JOHN K.,	Baltimore.
CROSS, E. J. D.,	Baltimore.
FISHER, WILLIAM A.,	Baltimore.
HANDY, JOHN H.,	Baltimore.
HINKLEY, EDWARD OTIS,	Baltimore.
JONES, ISAAC D.,	Baltimore.
KNOTT, A. LEO,	Baltimore.
LATHORE, JOHN H. B.,	Baltimore.
MARSHALL, CHARLES,	Baltimore.
MASON, JOHN T. (JOHN T. MASON, R.),	Baltimore.
ROBERTS, JOSEPH K., JR.,	Upper Marlboro.
ROBERTSON, A. H.,	Baltimore.
SHARP, GEORGE M.,	Baltimore.
SMALL, ALBERT,	Hagerstown.
STOCKBRIDGE, HENRY,	Baltimore.
VENABLE, RICHARD M.,	Baltimore.
WILLIAMS, EDWARD CALVIN,	Baltimore.
WILMER, SKIPWITH,	Baltimore.

MASSACHUSETTS.

ALLEN, STILLMAN B.,	Boston.
BALDWIN, G. W.,	Boston.
BARTLETT, SIDNEY,	Boston.

MASSACHUSETTS—Continued.

BELL, C. U.,	Lawrence.
BENNETT, EDMUND H.,	Taunton.
BISHOP, ROBERT R.,	Boston.
BRALEY, HENRY K.,	Fall River.
BROOKS, FRANCIS A.,	Boston.
BULLOCK, A. G.,	Worcester.
CHANDLER, ALFRED D.,	Boston.
CLIFFORD, CHARLES W.,	New Bedford.
COLLINS, PATRICK A.,	Boston.
CRAPO, WILLIAM W.,	New Bedford.
CURTIS, BENJAMIN ROBBINS,	Boston.
DICKINSON, M. F., JR.,	Boston.
ENDICOTT, WILLIAM C.,	Salem.
FORBUSH, GEORGE S.,	Boston.
FOSTER, DWIGHT,	Boston.
FOX, WILLIAM H.,	Taunton.
FULLER, HENRY,	Westfield.
FRENCH, WILLIAM B.,	Boston.
GASTON, WILLIAM,	Boston.
GILLIS, JAMES A.,	Salem.
GOODWIN, FRANK,	Boston.
HATHEWAY, SIMON W.,	Boston.
HEMENWAY, ALFRED,	Boston.
HOWE, ARCHIBALD M.,	Boston.
HUBBARD, CHARLES EUSTIS,	Boston.
HURD, FRANCIS W.,	Boston.
JONES, LEONARD A.,	Boston.
LADD, NATH. W.,	Boston.
MARSHALL, JOSHUA N.,	Lowell.
MARSTON, GEORGE,	New Bedford.
MERWIN, ELIAS,	Boston.
MUNROE, WILLIAM A.,	Boston.
MUZZEY, HENRY W.,	Boston.
MYERS, JAMES J.,	Boston.
PUTNAM, HENRY W.,	Boston.
RICHARDSON, DANIEL S.,	Lowell.
RICHARDSON, GEORGE F.,	Lowell.
RUSSELL, WILLIAM G.,	Boston.
SEARS, PHILIP H.,	Boston.
SHATTUCK, GEORGE O.,	Boston.
SMITH CHAUNCEY,	Boston.

MASSACHUSETTS—Continued.

SOUTHARD, CHARLES B.,	.	.	.	Boston.
SPAULDING, JOHN,	.	.	.	Boston.
STEVENS, GEORGE,	.	.	.	Lowell.
STOREY, MOORFIELD,	.	.	.	Lowell.
STORROW, JAMES J.,	.	.	.	Boston.
SWIFT, M. G. B.,	.	.	.	Fall River.
TREADWELL, JOHN P.,	.	.	.	Boston.
USHER, EDWARD PRESTON,	.	.	.	Boston.
WARNER, JOSEPH B.,	.	.	.	Boston.

MICHIGAN.

ATKINSON, O'BRIEN J.,	.	.	.	Port Huron.
BAKER, FREDERICK A.,	.	.	.	Detroit.
BALL, DANIEL H.,	.	.	.	Marquette.
BROWN, HENRY B.,	.	.	.	Detroit.
COOLEY, THOMAS M.,	.	.	.	Ann Arbor.
DICKINSON, DON M.,	.	.	.	Detroit.
DUFFIELD, HENRY M.,	.	.	.	Detroit.
GRIFFIN, LEVI T.,	.	.	.	Detroit.
KENT, CHARLES A.,	.	.	.	Detroit.
KIRCHNER, OTTO,	.	.	.	Detroit.
MEDDAUGH, ELIJAH W.,	.	.	.	Detroit.
POND, ASHLEY,	.	.	.	Detroit.
ROMEYN, THEODORE,	.	.	.	Detroit.
RUSSELL, ALFRED,	.	.	.	Detroit.
TOMS, ROBERT P.,	.	.	.	Detroit.
WALKER, CHARLES J.,	.	.	.	Detroit.
WEADOCK, THOMAS A. E.,	.	.	.	Bay City.
WELLS, WILLIAM P.,	.	.	.	Detroit.

MINNESOTA.

BENTON, REUBEN C.,	.	.	.	Minneapolis.
COLE, GORDON E.,	.	.	.	Faribault.
DESTY, ROBERT,	.	.	.	St. Paul.
ENGLISH, JOSIAH D.,	.	.	.	Duluth.
GOULD, O. B.,	.	.	.	Winona.
HANS, WILLIAM J.,	.	.	.	Minneapolis.
LEVI, ALBERT L.,	.	.	.	Minneapolis.
LOVELY, JOHN A.,	.	.	.	Albert Lea.
MARSH, FAYETTE,	.	.	.	Stillwater.
SANDORN, JOHN B.,	.	.	.	St. Paul.

MINNESOTA—Continued.

SANBORN, WALTER H.,	.	.	.	St. Paul.
SEARLES, JASPER N.,	.	.	.	Stillwater.
STEVENS, HIRAM F.,	.	.	.	St. Paul.
WILLISTON, W. C.,	.	.	.	Redwing.
WILSON, THOMAS,	.	.	.	Winona.
YOUNG, GEORGE B.,	.	.	.	St. Paul.

MISSISSIPPI.

HOUSTON, LOCK E.,	.	.	.	Aberdeen.
HOWRY, CHARLES B.,	.	.	.	Oxford.
LEIGH, JOSEPH E.,	.	.	.	Columbus.
McFARLAND, BAXTER,	.	.	.	Aberdeen.
ORR, J. A.,	.	.	.	Columbus.
REYNOLDS, R. O.,	.	.	.	Aberdeen.
SIMS, W. H.,	.	.	.	Columbus.
WHITFIELD, F. E.,	.	.	.	Corinth.

MISSOURI.

BARCLAY, SHEPARD,	.	.	.	St. Louis.
BRECKINRIDGE, SAMUEL M.,	.	.	.	St. Louis.
BROADHEAD, JAMES O.,	.	.	.	St. Louis.
COLLIER, M. DWIGHT,	.	.	.	St. Louis.
GALT, SMITH P.,	.	.	.	St. Louis.
GANTT, THOMAS T.,	.	.	.	St. Louis.
HAMMOND, WILLIAM G.,	.	.	.	St. Louis.
HENDERSON, J. B.,	.	.	.	St. Louis.
HITCHCOCK, HENRY,	.	.	.	St. Louis.
HOUGH, WARWICK,	.	.	.	Jefferson City.
JUDSON, FREDERICK N.,	.	.	.	St. Louis.
KEHR, EDWARD C.,	.	.	.	St. Louis.
LATHROP, GARDINER,	.	.	.	Kansas City.
MADILL, GEORGE A.,	.	.	.	St. Louis.
MUNFORD, JAMES E.,	.	.	.	St. Louis.
NOBLE, JOHN W.,	.	.	.	St. Louis.
SHIPPEN, JOSEPH,	.	.	.	St. Louis.
THOMPSON, SEYMOUR D.,	.	.	.	St. Louis.
TORREY, JAY L.,	.	.	.	St. Louis.
WITHROW, JAMES E.,	.	.	.	St. Louis.

NEBRASKA.

MANDERSON, CHARLES F.,	Omaha.
WOOLWORTH, J. M.,	Omaha.

NEW HAMPSHIRE.

ATHERTON, HENRY B.,	Nashua.
BINGHAM, HARRY,	Littleton.
BURNHAM, HENRY E.,	Manchester.
CURRIER, FRANK D.,	E. Canaan.
FELLOWS, JOSEPH W.,	Manchester.
LADD, WILLIAM S.,	Lancaster.
MARSTON, GILMAN,	Exeter.
MITCHELL, JOHN M.,	Concord.
PIKE, AUSTIN F.,	Franklin.
SHIRLEY, JOHN M.,	Andover.
STANLEY, CLINTON W.,	Manchester.
WAIT, ALBERT S.,	Newport.

NEW JERSEY.

ALLEN, ROBERT, JR.,	Red Bank.
BORCHERLING, CHARLES,	Newark.
DICKINSON, S. MEREDITH,	Trenton.
FLEMMING, JAMES,	Jersey City.
GARRETSON, A. Q.,	Jersey City.
GOBLE, L. SPENCER,	Newark.
KEASBEY, ANTHONY Q.,	Newark.
KEASBEY, GEORGE M.,	Newark.
MCCARTER, THOMAS N.,	Newark.
PARKER, CORTLANDT,	Newark.
PARKER, R. WAYNE,	Newark.
RANDOLPH, JOSEPH F.,	Jersey City.
RICHEY, AUGUSTUS G.,	Trenton.
SCHENCK, ABRAHAM V.,	New Brunswick.
SHIPMAN, J. G.,	Belvidere.
TEESE, FREDERICK H.,	Newark.
VREDENBURGH, JAMES B.,	Jersey City.
VROOM, GARRET D. W.,	Trenton.
WEART, JACOB,	Jersey City.
WEEKS, WILLIAM R.,	Newark.
WILLIAMS, WASHINGTON B.,	Jersey City.
WOODRUFF, ROBERT S.,	Trenton.

NEW YORK.

BAKER, ASHLEY D. L.,	Gloversville.
BENEDICT, ROBERT D.,	New York.
BRISTOW, BENJAMIN H.,	New York.
BRUSH, CHARLES H.,	New York.
BULLARD, E. F.,	New York.
BURNETT, HENRY L.,	New York.
BUTLER, WM. ALLEN,	New York.
BUTLER, WM. ALLEN, JR.,	New York.
CLARK, JAMES OLIVER,	New York.
CLARK, THOMAS ALLEN,	New York.
COX, S. S.,	New York.
CROWELL, CHARLES E.,	New York.
DAVISON, CHARLES A.,	New York.
DILLON, JOHN F.,	New York.
DORSHEIMER, WILLIAM,	New York.
DUDLEY, JAMES M.,	Johnstown.
EATON, SHERBURNE B.,	New York.
EMOTT, JAMES,	New York.
EVARTS, WILLIAM M.,	New York.
FOX, AUSTEN G.,	New York.
HALE, MATTHEW,	Albany.
HUTCHINS, WALDO,	New York.
ISAACS, M. S.,	New York.
JEWETT, HUGH J.,	New York.
KERNAN, FRANCIS,	Utica.
LEEDS, CHARLES C.,	New York.
MACFARLAND, W. W.,	New York.
MATHEWS, ALBERT,	New York.
MOAK, N. C.,	Albany.
NASH, STEPHEN P.,	New York.
NELSON, HOMER A.,	Poughkeepsie.
NICOLL, DELANCEY,	New York.
OLMSTEAD, AARON B.,	Saratoga Springs.
PARKER, ALTON B.,	Kingston.
PARKER, AMASA J.,	Albany.
PEABODY, CHARLES A.,	New York.
PEABODY, CHARLES A., Jr.,	New York.
PHELPS, WM. WALTER,	New York.
PORTER, JOHN K.,	New York.
PRINE, RALPH E.,	Yonkers.
PRYOR, ROGER A.,	Brooklyn.

NEW YORK—Continued.

ROGERS, SHERMAN S.,	Buffalo.
RUSSELL, W. H. H.,	New York.
SCHOONMAKER, AUGUSTUS, JR.,	Kingston.
SCUDDER, HENRY J.,	New York.
SHACK, FERDINAND,	New York.
SHEPARD, ELLIOTT F.,	New York.
SMITH, HORACE E.,	Albany.
SPRAGUE, E. C.,	Buffalo.
SPEIR, GILBERT M., JR.,	New York.
STERNE, SIMON,	New York.
STICKNEY, ALBERT,	New York.
SULLIVAN, ALGERNON S.,	New York.
TAYLOR, JOHN D.,	New York.
TODD, A. J.,	New York.
TUCK, SOMERVILLE P.,	New York.
VANDERPOEL, A. J.,	New York.
WARD, JOHN E.,	New York.
WHEELER, EVERETT P.,	New York.
WILLIS, BENJAMIN A.,	New York.
WINNLOW, JOHN,	New York.

NORTH CAROLINA.

BOYD, JAMES E.,	Greensboro.
BRIDGERS, JOHN L., JR.,	Tarboro.
KEOGH, THOMAS B.,	Greensboro.
STAPLES, JOHN N.,	Greensboro.

OHIO.

BAKER, WILLIAM,	Toledo.
BALDWIN, CHARLES C.,	Cleveland.
BURKE, STEVENSON,	Cleveland.
CHERRINGTON, THOMAS,	Ironton.
COLSTON, EDWARD,	Cincinnati.
CRAIGHEAD, S.,	Dayton.
DAUGHERTY, M. A.,	Columbus.
DAVIDSON, WILLIAM A.,	Cincinnati.
FERGUSON, E. A.,	Cincinnati.
FORCE, MANNING F.,	Cincinnati.
GRANGER, M. M.,	Zanesville.
GREEN, EDWIN P.,	Akron.
GRISWOLD, SENECA O.,	Cleveland.

OHIO—Continued.

GROESBECK, WILLIAM S.,	.	.	Cincinnati.
GUNCKEL, LEWIS B.,	.	.	Dayton.
HALL, JOHN J.,	.	.	Akron.
HARRISON, RICHARD A.,	.	.	Columbus.
HAYNES, DANIEL A.,	.	.	Dayton.
HOADLY, GEORGE,	.	.	Cincinnati.
HODGE, NOAH,	.	.	Akron.
HOOK, GEORGE W.,	.	.	Dayton.
JOHNSON, EDGAR M.,	.	.	Cincinnati.
JOHNSON, WILLIAM W.,	.	.	Ironton.
JORDAN, ISAAC M.,	.	.	Cincinnati.
KING, RUFUS,	.	.	Cincinnati.
KOHLER, JACOB A.,	.	.	Akron.
LOGAN, THOMAS A.,	.	.	Cincinnati.
MASON, JAMES,	.	.	Cleveland.
MATTHEWS, STANLEY,	.	.	Cincinnati.
MCCLINTOCK, W. T.,	.	.	Chillicothe.
MORRIS, S. W.,	.	.	Ironton.
MUNGER, WARREN,	.	.	Dayton.
NEAL, HENRY S.,	.	.	Ironton.
OVIATT, EDWARD,	.	.	Akron.
PAGE, HENRY F.,	.	.	Circleville.
RANNEY, HENRY C.,	.	.	Cleveland.
RANNEY, RUFUS P.,	.	.	Cleveland.
SHAW, R. K.,	.	.	Marietta.
SHOEMAKER, MURRAY C.,	.	.	Cincinnati.
UPSON, WILLIAM H.,	.	.	Akron.
YOUNG, EDMOND S.,	.	.	Dayton.

OREGON.

DEADY, M. P.,	.	.	Portland.
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PENNSYLVANIA.

ARMSTRONG, WM. H.,	.	.	Williamsport.
ARNOLD, MICHAEL,	.	.	Philadelphia.
ATHERTON, THOMAS H.,	.	.	Wilkesbarre.
BAER, GEORGE F.,	.	.	Reading.
BALDWIN, HENRY, JR.,	.	.	Philadelphia.
BAUSMAN, J. W. B.,	.	.	Lancaster.
BIDDLE, GEORGE W.,	.	.	Philadelphia.
BISPHAM, GEORGE TUCKER,	.	.	Philadelphia.

PENNSYLVANIA—Continued.

BRECK, CHARLES DE PONT,	Scranton.
BREDIN, JAMES,	Butler.
BRUNDAGE, A. R.,	Wilkesbarre.
CRAWFORD, GEORGE L.,	Philadelphia.
DARLING, EDWARD P.,	Wilkesbarre.
DARLING, J. VAUGHAN,	Wilkesbarre.
ELLMANER, NATHANIEL,	Lancaster.
FRANKLIN, THOMAS E.,	Lancaster.
GATES, Q. A.,	Wilkesbarre.
GILBERT, LYMAN D.,	Harrisburg.
GREEN, HENRY,	Easton.
GROSS, JOSEPH P.,	Philadelphia.
GUTHRIE, GEORGE W.,	Pittsburg.
HANDLEY, JOHN,	Scranton.
HAY, MALCOLM,	Pittsburg.
HENPHILL, JOSEPH,	West Chester.
HEVERIN, JAMES H.,	Philadelphia.
HUEY, SAMUEL B.,	Philadelphia.
KULP, GEORGE B.,	Wilkesbarre.
LAMBERTON, C. L.,	Wilkesbarre.
LEAR, GEORGE,	Doylestown.
LISTER, CHARLES C.,	Philadelphia.
LITTLE, WILLIAM E.,	Tunkhannock.
LIVINGSTON, J. B.,	Lancaster.
LUCKENBACH, W. D.,	Allentown.
MACVEAGH, WAYNE,	Philadelphia.
MCCINTOCK, ANDREW T.,	Wilkesbarre.
MERUEE, GEORGE G.,	Philadelphia.
METZGER, THOMAS B.,	Allentown.
MILLER, N. DU BOIS,	Philadelphia.
MITCHELL, JAMES T.,	Philadelphia.
MONAGHAN, ROBERT E.,	West Chester.
NORTH, E. D.,	Lancaster.
NORTH, HUGH M.,	Columbia.
OUTERBRIDGE, ALBERT A.,	Philadelphia.
PALMER, HENRY W.,	Wilkesbarre.
PATTERSON, C. STUART,	Philadelphia.
PENNYPACKER, CHARLES H.,	West Chester.
PENNYPACKER, SAMUEL W.,	Philadelphia.
PERKINS, SAMUEL C.,	Philadelphia.
PELLET, SILAS W.,	Philadelphia.

PENNSYLVANIA—Continued.

PORTER, WILLIAM A.,	Philadelphia.
PRICE, J. SERGEANT,	Philadelphia.
PRICHARD, FRANK P.,	Philadelphia.
RAWLE, FRANCIS,	Philadelphia.
RAWLE, WM. HENRY,	Philadelphia.
REED, HENRY,	Philadelphia.
REYNOLDS, SAMUEL H.,	Lancaster.
ROBB, SAMUEL,	Philadelphia.
ROBERTS, GEORGE W.,	Norristown.
SANDERS, DALLAN,	Philadelphia.
SEIBERT, W. N.,	New Bloomfield.
SHARP, ISAAC S.,	Philadelphia.
SHULAN, GEORGE, JR.,	Pittsburg.
SHOEMAKER, L. D.,	Wilkesbarre.
SLAYMAKER, AMOS,	Lancaster.
SMITH, WALTER GEORGE,	Philadelphia.
STEWART, JOHN,	Chambersburg.
STEWART, W. F. BAY,	York.
STURGES, E. B.,	Scranton.
TOWNSEND, WASHINGTON,	West Chester.
VAUX, RICHARD,	Philadelphia.
WADELL, WILLIAM B.,	West Chester.
WAGNER, SAMUEL,	Philadelphia.
WILLARD, EDWARD N.,	Scranton.
WILTRANK, WILLIAM W.,	Philadelphia.
WOLVERTON, SIMON P.,	Sunbury.
WOODWARD, STANLEY,	Wilkesbarre.

RHODE ISLAND.

BRADLEY, CHARLES S.,	Providence.
GORMAN, CHARLES E.,	Providence.
PAYNE, ABRAHAM,	Providence.
PURKHAM, FRANCIS B.,	Newport.
SHEPHERD, WILLIAM P.,	Newport.
THURSTON, BENJAMIN F.,	Providence.

SOUTH CAROLINA.

BACOT, T. W.,	Charleston.
BARKER, THEODORE G.,	Charleston.
BENET, WILLIAM C.,	Abbeville.
BOYD, ROBERT W.,	Darlington.

SOUTH CAROLINA—Continued.

CAMPBELL, JAMES B.,	.	.	.	Charleston.
DARGAN, E. KEITH,	.	.	.	Darlington C. H.
MCCRADY, EDWARD, JR.,	.	.	.	Charleston.
SIMONTON, C. H.,	.	.	.	Charleston.
SMYTHE, AUGUSTINE T.,	.	.	.	Charleston.
YOUNG, HENRY E.,	.	.	.	Charleston.

TENNESSEE.

ALLISON, ANDREW,	.	.	.	Nashville.
BATE, H. R.,	.	.	.	Covington.
BROWN, JOHN C.,	.	.	.	Pulaski.
CARROLL, WILLIAM H.,	.	.	.	Memphis.
COOPER, EDMUND,	.	.	.	Shelbyville.
COOPER, WILLIAM F.,	.	.	.	Nashville.
ELLETT, HENRY T.,	.	.	.	Memphis.
ESTES, BEDFORD M.,	.	.	.	Memphis.
FENTRESS, JAMES,	.	.	.	Bolivar.
FRAYSER, R. DUDLEY,	.	.	.	Memphis.
GAUT, JOHN M.,	.	.	.	Nashville.
McFARLAND, L. B.,	.	.	.	Memphis.
McNEAL, ALBERT T.,	.	.	.	Bolivar.
MOORMAN, H. C.,	.	.	.	Somerville.
MORGAN, ROBERT J.,	.	.	.	Memphis.
PIERCE, JAMES O.,	.	.	.	Memphis.
SNEED, JOHN L. T.,	.	.	.	Memphis.
STEELE, THOMAS,	.	.	.	Ripley.
WALKER, SAMUEL P.,	.	.	.	Memphis.
WOOD, R. H.,	.	.	.	Bolivar.

TEXAS.

BALLENGER, W. P.,	.	.	.	Galveston.
CRAWFORD, W. L.,	.	.	.	Dallas.
FULTON, MARSHALL,	.	.	.	Denton.
GRESHAM, WALTER,	.	.	.	Galveston.
STOCKDALE, F. S.,	.	.	.	Cuero.
STREET, ROBERT G.,	.	.	.	Galveston.
WAELDER, JACOB,	.	.	.	San Antonio.
WAUL, T. N.,	.	.	.	Galveston.
WEST, C. S.,	.	.	.	Austin.
WILLIE, A. H.,	.	.	.	Galveston.

VERMONT.

HINCKLEY, LYMAN G.,	.	.	.	Chelsea.
JOHNSON, WILLIAM E.,	.	.	.	Woodstock.
LAWRENCE, L. L.,	.	.	.	Burlington.
McCULLOUGH, JOHN G.,	.	.	.	N. Bennington.
PAUL, NORMAN,	.	.	.	Woodstock.
PHELPS, EDWARD J.,	.	.	.	Burlington.
POLAND, LUKE P.,	.	.	.	St. Johnsbury.
PROUT, JOHN,	.	.	.	Rutland.
ROBERTS, DANIEL,	.	.	.	Burlington.
SHAW, WILLIAM G.,	.	.	.	Burlington.
SMALLEY, B. B.,	.	.	.	Burlington.
TUPPER, A. P.,	.	.	.	Middleboro.
WALKER, W. H.,	.	.	.	Ludlow.

VIRGINIA.

HAMILTON, ALEXANDER,	.	.	.	Petersburg.
PAGE, LEIGH R.,	.	.	.	Richmond.
ROBERTSON, WILLIAM J.,	.	.	.	Charlottesville.
TUCKER, J. RANDOLPH,	.	.	.	Lexington.

WEST VIRGINIA.

BOGGESE, CALEB,	.	.	.	Clarksburg.
CAMPBELL, JOHN A.,	.	.	.	New Cumberland.
COLE, W. L.,	.	.	.	Parkersburg.
DAVIS, JOHN L.,	.	.	.	Clarksburg.
HEREFORD, FRANK,	.	.	.	Union.
HUTCHINSON, JOHN A.,	.	.	.	Parkersburg.
KNIGHT, EDWARD B.,	.	.	.	Charleston.
SOMMERVILLE, J. B.,	.	.	.	Wellsburg.

WISCONSIN.

CARY, ALFRED L.,	.	.	.	Milwaukee.
CARY, JOHN W.,	.	.	.	Milwaukee.
CARY, MELBERT B.,	.	.	.	Milwaukee.
GREGORY, J. C.,	.	.	.	Madison.
HOOKEE, DAVID G.,	.	.	.	Milwaukee.
HUDD, THOMAS R.,	.	.	.	Green Bay.
JENKINS, JAMES G.,	.	.	.	Milwaukee.
MARINER, EPHRAIM,	.	.	.	Milwaukee.
PINNEY, SILAS U.,	.	.	.	Madison.
VILAS, WILLIAM F.,	.	.	.	Madison.
WEGG, DAVID S.,	.	.	.	Milwaukee.
WINKLER, FREDERICK C.,	.	.	.	Milwaukee.

APPENDIX.

ADDRESS
OF
ALEXANDER R. LAWTON,
OF GEORGIA,
PRESIDENT OF THE ASSOCIATION.

GENTLEMEN OF THE AMERICAN BAR ASSOCIATION.—The obligation imposed by your Constitution upon the President, “to communicate the most noteworthy changes in statute law on points of general interest, made in the several states and by Congress during the preceding year,” is much more serious in its exactions, and far more difficult to discharge properly than was probably contemplated by the men who so skillfully made the draft of our fundamental law. No one can fully appreciate these difficulties until he has attempted to execute the task.

There is no small labor in gathering the materials for this work, scattered as they are over an area from the St. Lawrence to the Gulf, from the Atlantic to the Pacific; but the attempt to give form and shape to this material—to eliminate the substance from the shadow, to separate the wheat from the chaff—conscious all the while that, when the result is finally reached and given out in utterance, he who proclaims it can only hope to be greeted with, “Dry-as-dust!”—is indeed appalling. The knowledge that I speak to a generous profession, and to an audience which gives the assurance of that intelligent consideration, to be expected only from those who look with interest to the per-

manent value of the information conveyed, rather than to pleasure at the moment, gives me courage.

With this plea for charity, and this claim upon your patience, I remark, that the means indicated by our Association for acquiring the necessary information does not seem to be adequate for the purpose; for though my requests have in most instances been responded to with kindness and alacrity, yet in not a few cases, owing to change of residence, absence from the country, and the like, I have failed to receive either the statutes themselves or an abstract of them, and in some instances the failure has attached even to the final efforts made to procure them from the proper departments of the states themselves. Perhaps our able and watchful Executive Committee can devise some addition to the resources of future Presidents in this regard.

The terse and comprehensive statement of the objects of this Association, "to advance the science of jurisprudence, promote the administration of justice and uniformity of legislation throughout the nation, uphold the honor of the law, and encourage cordial intercourse among the members of the American Bar," would not at first sight lead us to expect such exclusive prominence to be given at our opening each year to the mere changes in the statute law of the land. But if we bear in mind how largely the members of our profession are responsible for the passage, as well as for the frame and quality of these laws, our attention will be seriously arrested, and our judgment influenced as to the right of the lawyer to declaim against bad legislation—vicious or inconsiderate—as altogether *the work of others*.

In the Congress of the United States, in the legislatures of nearly every State, and in the high executive offices influencing legislation, most of the prominent and controlling men are lawyers, and this not including that one of the three

great departments of government in which every place is filled by members of this profession—the Judicial.

What other profession, calling, or vocation has assigned to it exclusively one of the great divisions of government? What other profession, calling, or vocation so largely represented in the other two great divisions—legislative and executive? Though not charged with this duty *as an entire profession*, yet, as members of the legal fraternity, we cannot escape from the responsibilities which attach to these honors, whether they are sought for or thrust upon us. And ours is a generous profession, always ready to serve the individual or the public—for a proper consideration, whether expressed in the form of the traditional *honorarium*, or in the honors and perquisites of high office bestowed. And so close an observer as de Tocqueville has said that “a republic could not long exist, if the influence of lawyers in public business did not increase in proportion to the power of the people.”

Let us not be deceived by the thought that our profession *as a whole* are naturally or necessarily on the side of the right, and of free institutions. The brave and noble deeds which have been performed by the great lights of the law—defending the oppressed and defying the oppressor—are to be credited rather to the *individual* men who have done these great and good works, and thus reflected honor on the profession, without borrowing honor from it. Accepting, then, our measure of this responsibility for the character of these changes in the statute law, let us proceed to glance at them, and endeavor to ascertain whether, in these efforts at change, we are mindful of Shakspeare’s warning, that in “Striving to better, oft we mar what’s well”—whether it is indeed fortunate or not that statutes in derogation of the common law are to be strictly construed, so as to encourage any alteration of the existing law as little as possible, or, as the objectors to this rule would sneeringly state it, “That re-

formatory legislation must be prevented as far as practicable from working the reform intended."

It was Bulwer who said, "In all the departments of thought among which intellectual life is distributed, there must be, for safe and continuous progress, a principle that delays innovation."

THE UNITED STATES.

The legislation of Congress at its last session consisted of eighty-two public acts, twenty-nine public resolutions, eighty-one private acts, and two private resolutions; showing how much attention is given by that body to the private interests of individuals. The most important act was one to regulate and improve the Civil Service of the United States, which provides for the manner of filling places in the various departments of the government, and is regarded as a step in the direction of reform. The act is full of details as to the methods to be resorted to for ascertaining competency and merit, and while it makes us full of hope, it seems to be very imperfect in many of its details. Professedly it is intended to do away with that principle, which has been so long asserted after the success of any political party, "To the victors belong the spoils." This act has been so generally discussed in the public prints, and is so well known to most intelligent men, that I refrain from dwelling upon it.

An act to afford assistance and relief to Congress and the executive departments, in the investigation of claims and demands against the government, is important, as recognizing the fact that the judicial function does not properly belong either to Congress or the executive departments, but that the courts are the proper forum for the trial of disputed questions of fact and law, arising in cases in which the United States are concerned. It is hoped that the transfer

of the vast mass of private claims, which has accumulated before the committees of Congress and the bureaus of the executive departments, to the Court of Claims, will cause the government to feel the purifying influence of the change. But will the transfer be actually made, and the lobbyist and the confidence-man lose his occupation?

It seems to be an evidence of the increase of luxury in the country, that the act of March 3, 1883, authorizes the Secretary of the Treasury to "cause yachts used and employed exclusively as pleasure-vessels, or designed as models of naval architecture, to be licensed on terms which will authorize them to proceed from port to port of the United States, and to foreign ports, without entering or clearing at the custom-house." On the other hand, it seems to indicate an increase of vice of a certain sort, that an act of Congress is "directed against the importation into the United States from foreign countries of obscene books, pamphlets, papers, etc., or other articles of a similar nature, or any drug or medicine, or any article whatsoever, for the prevention of conception, or for causing unlawful abortion.

It may be interesting to the profession to know that Congress has appropriated eight thousand dollars to enable the librarian of Congress "to purchase a set of records and briefs in cases in the Supreme Court of the United States, belonging to the late Matthew N. Carpenter, which collection will be placed in the law branch of the Library of Congress."

CONSTITUTIONAL AMENDMENTS.

Arkansas has submitted for ratification an amendment, which is noticed elsewhere, relating to the state debt.

A joint resolution of the legislature of *Missouri* proposes the establishment, by constitutional amendment, of a new system of courts of appeal, upon which the people are to vote in November next.

The *Nevada* legislature has recommended the call of a constitutional convention for the purpose of making a general revision of her fundamental law, and has nevertheless proposed for ratification by the people four amendments, the first providing for biennial sessions of the legislature; the second, disfranchising all persons convicted of felony or treason in any state or territory, and all persons convicted of selling their vote at any election within the state; the third, changing the law regulating the method of amending the constitution and calling conventions for this purpose; and the fourth, setting aside large tracts of land for the exclusive benefit of the state educational fund.

New York has proposed an amendment prohibiting contract labor in the state prisons; and *South Carolina* has given power to her legislature to take away the right of suffrage from persons who have been convicted of burglary, larceny, perjury, forgery, or any other infamous crime, as well as treason, murder, and duelling, as now provided by law.

LAWS AND CODIFICATION SYSTEM OF LAW.

The common law of England, so far as it is not repugnant to the Constitution and laws of the state and the United States, has been adopted by the state of *Nevada*.

New York has codified all of her laws relating to the militia, and adopted a military code; while *North Carolina* has adopted a revised code, containing all the statute laws of that state.

Tennessee has, by joint resolution, granted authority to two attorneys of the state to make a revision, digest, and codification of her general laws, which, when completed, shall be known as the Code of Tennessee; and the act expressly provides that the compilation shall be done at the expense of the compilers. It may be inquired whether they did not have this right without a special statute!

STATE DEBTS.

Arkansas has submitted to the people for their ratification an amendment to her constitution prohibiting the payment of certain bonds of the state, known respectively as "funding bonds," or "Holford bonds," "railroad aid bonds," and "levee bonds," issued under certain acts of the legislature approved in 1868, 1869, and 1871. (Acts of 1883, p. 346.)

North Carolina has extended to January 1, 1885, the provisions of the act of 1879 for the compromise and settlement of her debt, which expired by limitation on January 1, 1882.

POLITICAL ENACTMENTS.

New York has established a Civil Service Commission, for the examination of applicants for state offices which are not elective nor merely those of day laborers, and to test the fitness of applicants for promotion. The commission is composed of three persons appointed by the governor.

The same state has endeavored to suppress political assessments by making it a misdemeanor for a public officer to solicit contributions for political purposes from other officers, or to change or threaten to change the rank or compensation of any other officer by reason of payment or non-payment of money for political purposes, or by reason of the way in which a vote shall be cast. The act provides that it shall not prevent any public officer from giving free gifts and contributions for political purposes to any person other than a public officer, outside of the building where official duties are discharged; but if they be given in consideration of retaining or securing public office, the offense is a misdemeanor.

New York also permits appointments by the governor, which require confirmation by the Senate, to be made during the session of the legislature next before the expiration of the term of the then incumbent.

BALLOTS AND ELECTIONS.

Primaries.

Colorado has passed an act prescribing the manner in which primary elections shall be conducted and the votes cast be counted; but the act shall only be enforced when the party, convention, or committee ordering the election shall prescribe that it be conducted under its provisions. *Nevada* also has passed an act to regulate primaries, while *Connecticut* has made bribery and fraud at caucuses criminal. *New Jersey* has prescribed a punishment for bribery at all primaries, conventions, and elections.

Colorado has enacted that, in all public elections, all ballots shall be printed in black ink on plain white news printing paper of a prescribed size, "without any device or mark whatsoever by which one ticket may be known or distinguished from another, except the words at the head of the ticket." And "When a ballot with a certain designated heading contains printed thereon, in place of another, a name not found on the regular ballot having such heading, such name shall be regarded by the judges [of election] as having been placed thereon for the purpose of fraud, and such ballot shall not be counted for the name so found."

In *New Jersey*, at all general, local, municipal, or special elections, a certain prescribed form of ballot-box shall be used, of which the top and bottom shall be wood, and the four sides shall be of plate glass at least five-sixteenths of an inch thick. The dimensions and manner of construction are minutely described; and it is further provided that it shall have three locks of different construction, so that none of them can be opened with the key belonging to another; and the box must be so constructed that, when locked, no ballot can by any means be placed in it.

TAXATION.

North Carolina has provided for the assessment of white persons for schools for white children, and of colored persons for schools for colored children.

In *New York*, all debts and obligations of every description due to residents of the state, however secured, and wherever the securities may be held, are made subject to taxation by the state.

The most noteworthy change in the laws of the states on this subject of taxation is the *Vermont* "Act to Provide a Revenue for the Payment of State Expenses." Under its provisions all such funds are to "be raised by direct taxes upon the corporate franchise or business of railroad, insurance, guaranty, express, telegraph, telephone, steamboat, car, and transportation companies, savings banks, savings institutions, and trust companies." A commissioner of state taxes is provided for, whose duty it shall be to see to the collection of the taxes imposed. The act provides for the amounts of the taxes, the returns, and payment and collection. It does not appear from the act that the corporations are relieved from any taxes for county and city purposes.

Vermont has also passed an act requiring owners of fowls aggregating more than \$20 in value, to pay a tax on their value in excess of \$20; and the act provides that dressed poultry shall in no case be exempt. The same state has enacted that the exemption from taxation which was enjoyed by the now defunct Vermont Central Railroad shall not be enjoyed by any trustee, manager, receiver, reorganized corporation, or lessee operating the road. Was not that the *law* before this statute?

West Virginia has created a commission to ascertain facts concerning, and consider the assessment and taxation of,

property within the state. Each commissioner is authorized to administer oaths and propound questions, and it is made a misdemeanor for any person to refuse to answer "any question." Is not this a "thumb-screw" process?

EDUCATION.

Alabama and *Vermont* have made physiology and hygiene a part of the prescribed curriculum of their public schools, and, in the latter state, special prominence must be given to the effects of stimulants and narcotics upon the human system. *Michigan* has also done the like.

Illinois, *Michigan*, *New Jersey*, and *Rhode Island* have passed laws upon the subject of compulsory education. *Illinois* requires all children between the ages of eight and fourteen to attend some public or private school for twelve weeks in each year, six of which must be consecutive weeks; while *Rhode Island* prescribes that children between the ages of seven and fifteen shall attend a public school for the same period, private schools being substituted only when approved by a school committee. In the latter state, "truant officers" are appointed to enforce the law.

California has added an Industrial Department to the Deaf, Dumb, and Blind Asylum of the state; and *South Carolina* gives to a certain number of meritorious boys in Charleston, to be selected by competitive examination, an opportunity for free collegiate education.

The subject of legal education seems to have engaged the attention of but one state. *California* has by statute given permission to S. C. Hastings to found "The Hastings College of the Law" as a part of her state University; and the only condition attached is that there shall always be a course of lectures upon the duties of municipal officers in the city and county of San Francisco.

LABOR AND LABORERS.

California, Missouri, Michigan, New York, and Wisconsin have each established by law a Bureau of Labor Statistics, whose duty it shall be to present annually to the governor or legislature statistical details relating to all the departments of labor, especially in relation to the commercial, industrial, social, and sanitary condition of working-men, and the productive industries of the state. Members of the California bureau "shall have free access to all places and works of labor," and it is made the duty of those in Missouri to inspect all mines, warehouses, machine-shops, factories, workshops, foundries, and other manufacturing establishments where persons are employed.

New Jersey has taken a backward step in relation to strikes, and declared it not to be unlawful for two or more persons to combine together or agree to "persuade, advise, or encourage, by peaceable means, any person or persons to enter into any combination for or against leaving or entering into the employment of any person, persons, or corporation."

New York has submitted to the people for their ratification a constitutional amendment prohibiting contract labor in the state prisons.

Ohio has given to laborers employed by any person or corporation at agriculture, mining, manufacturing, or other manual labor, a lien upon the real property of their employers for their wages.

Pennsylvania has passed an act for the adjustment of differences between employers and employes in the iron, steel, glass and textile fabrics, and the coal trades, known as the "Voluntary Trade Tribunal Act." It provides for submitting all and vexed disputes to a tribunal chosen equally by both parties (under a permit from the judge

presiding in that judicial district), whose decisions may be made final and enforced by the processes of law, under certain limitations carefully guarded.

RAILROAD LAWS.

Alabama makes it a misdemeanor for two or more railroads to make any pooling arrangements whatever for the purpose of preventing fair and free competition, the provisions of the act extending to arrangements made outside of the state, to be executed within it; and also prohibits their making discriminating rebates from their tariff of rates.

In *Arkansas*, any railroad may now "cross, join, intersect, or unite with" any other railroad within the state, which must, under prescribed penalties, co-operate and furnish all necessary facilities. Both companies are compelled to stop their trains at the point of union or intersection, and are prohibited from discriminating in any manner against freight or passengers of the other.

In *Connecticut*, all railroads must hereafter, in their public time-tables, conform to the standard time of the state, which is that of New York City. In the same state, any railroad owning a line, built or unbuilt, to an adjoining state, may consolidate with any connecting road, built or unbuilt, in the latter state.

Florida has followed the example of so many of her sister states, and now permits the husband, wife, or minor child, or, if there be none, the administrator of one killed through the negligence of another, to sue for the value of the life in all cases in which the deceased, had he lived, could have sued for the resulting damages.

Railroads doing business in *Illinois* must hereafter keep open in that state all necessary books for the transfer of its stock; and must also keep their depots open and well

lighted and heated for at least a half hour before and after the arrival and departure of trains.

Minnesota has declared the willful neglect or gross negligence of any officer or employé of any railroad, resulting in the death of any person, to be manslaughter in the third degree; where an injury is inflicted which does not result in death, the punishment shall be by fine and imprisonment.

In *North Carolina*, all equipments and rolling-stock of every description shall hereafter be subject to judgments against the company using and controlling them, unless the vendor's lien shall be recorded; and any such claimed by the vendor must have his name plainly marked on both sides.

Recent decisions of the Supreme Court of *Tennessee*, to the effect that damages in suits by the next of kin for death caused by the fault or omission of another, must be only such as the deceased could have recovered had he lived, have provoked an amendment of the statute by which the recovery shall hereafter embrace "not only damages for the mental and physical suffering of the deceased, but also the damages resulting to the next of kin."

If the damages referred to are *pecuniary*, the next of kin can scarcely suffer them by the death of a relative. They often have their condition much improved by "his taking off."

Vermont has passed three acts upon this subject, of which the first, entitled "An Act to Prevent Unjust Discriminations," does not differ materially from the previous legislation of other states for the same purpose. The second permits the companies to fix their own rates of toll for freight and passengers; but the Supreme Court may, upon the petition of three freeholders, and after notice to the company, reduce the toll in its discretion. The third grants

to the railroad commissioners power to fix the times when passenger trains of connecting roads shall connect with each other.

West Virginia makes provision for the manner in which railroads may extend their lines beyond their present termini; but the Baltimore and Ohio and Northwestern Virginia railroads are specially excepted in the act. What have these excluded roads done to deserve this treatment?

Another statute of the same state enacts that no injunction shall be granted by any court or judge to restrain the collection of taxes on any railroad, except upon the ground of the unconstitutionality of the tax. Should the legislature take a fancy to tax any railroad to the full extent of its value, and thus *destroy it at one blow*, this act seems to deprive the unfortunate corporation of any remedy.

The legislature of *Texas* gave long and earnest attention to this subject of the proper control of railroads; and it culminated in the passage of the act of April 10, 1883, for the appointment of a "state engineer," whose duties and powers are large, but well defined. He must personally visit each railroad in the state twice every year; listen to complaints and grievances, and endeavor to correct them. If he fails to correct them, and any law is violated, he must report to the governor and attorney general, so that suits may be brought. There are many valuable features in the act, and it is in striking contrast with the action of many of the states giving to commissioners the most arbitrary powers over railroads, to be exercised without even giving the roads a hearing.

CORPORATIONS.

In *Connecticut*, every charter granted shall be void unless the corporation be organized within two years, and a certificate be filed with the secretary of state.

Nevada has passed an act allowing certain domestic and certain foreign corporations to consolidate.

All *New York* corporations (except savings banks) doing business in that and other states and countries may invest their funds in the dividend-paying stocks or securities of other corporations doing business in New York, or such other states or countries. The general act of the same state for the incorporation of mining and manufacturing companies is amended by providing that there shall be not less than three nor more than thirteen trustees, of whom a majority shall be residents and citizens of the state.

INSURANCE.

The subject of insurance has received some attention from the different states.

Illinois has declared by statute that "associations and societies which are intended to benefit the widows, orphans, heirs, and devisees of deceased members thereof, and members who have received a permanent disability, and where no annual dues or premiums are required, and where the members shall receive no money, as profit or otherwise, except for permanent disability, shall not be deemed insurance companies." The same state has passed an act for the purpose of suppressing the practice known as "*graveyard insurance*."

New Jersey has declared that the transaction or attempt at transaction of fire insurance business by or on behalf of any person or corporation not authorized by the laws of the state is a misdemeanor.

New York has repealed her obnoxious act of 1881 (noted by your President of that year) providing that whenever, by the laws of other states, restrictions are imposed on the transaction of business by insurance companies of New

York, the courts of New York shall not entertain suits brought against such companies for losses occurring in such state.

Michigan has made material alterations of her insurance laws.

SUNDAY LAWS.

Nevada has made it a misdemeanor for any person to keep open on Sunday "any store, banking-house, broker-office, or other place of business for the purpose of transacting business therein," or to expose for sale "any provisions, dry-goods, clothing, hardware, fruits, vegetables, or other merchandize;" but the provisions of the act shall "not apply to persons who, on Sunday, keep open hotels, boarding-houses, barber-shops, baths, *saloons*, cigar-stores, restaurants, taverns, livery-stables, and drug-stores, for the legitimate business of each." The *exceptions* here are much greater than the rule!

The Sunday law of *New York* as it now exists may be thus briefly stated: All labor is prohibited, except works of necessity or charity, and they are defined as including "whatever is needful during the day for the good order, health, or comfort of the community." "All manner of public selling, or offering for sale of property on Sunday is prohibited, except that articles of food may be sold and supplied at any time before ten o'clock in the morning, and except also that meals may be sold to be eaten on the premises where sold, or served elsewhere by caterers: and prepared tobacco, in places other than where spirituous or malt liquors or wines are kept or offered for sale, and fruit, confectionery, newspapers, drugs, medicines, and surgical appliances may be sold in a quiet and orderly manner at any time of the day."

ADULTERATION OF FOOD AND PRESERVATION
OF HEALTH.

In *California*, hereafter all *oleomargarine* must be distinctly labeled with its name, and hotel keepers and dealers who use it must post in a conspicuous place a sign reading, "Oleomargarine sold here." In addition to this, all hotel and boarding-house keepers who furnish it to their guests must, on inquiry from them, cause them to be distinctly informed that the article before them "is not butter, the genuine production of the dairy, but is *Oleomargarine*." Very severe on Oleomargarine, and on hotel keepers, their clerks, etc.!

Illinois has made the adulteration of vinegar a misdemeanor; and *New Jersey* has passed an act to regulate the sale of petroleum and its products, and an act supplemental to an act to prevent the adulteration of food and drugs.

Pennsylvania has passed an "Act to Protect Dairymen, and prevent Deception in the sale of Butter and Cheese," the text of which I have not seen, but which is probably aimed at Oleomargarine.

Missouri has created a State Board of Health, who are given the necessary authority to prevent epidemics, and to whom all births and deaths must be reported; and in *Wisconsin*, every town and village board or common council shall hereafter, within thirty days after each annual election, organize itself into a board of health, and appoint a health officer for the protection of the public health.

Texas has passed a most rigid and well conceived quarantine act, giving very large powers to the governor and "chief health officer" to prevent the entrance or spread of epidemics. It is doubtful if any state has taken hold of this question with greater earnestness and vigor.

HUMANE LAWS, AND LAWS FOR THE PRESERVATION OF
HUMAN LIFE.

An *Alabama* statute requires that persons convicted of misdemeanors and felonies on the one hand, and white and colored convicts on the other, from being made to sleep in the same room, or chained together; and also prohibits the *subletting* of state convicts.

Alabama has passed an act for the prevention of cruelty to animals.

Minnesota and *New Jersey* have established a State Board of Charities and Corrections.

Minnesota, *New Jersey*, *South Carolina*, and *Missouri* have each passed acts to regulate the licensing of physicians, and prohibiting the practice of medicine by any one not licensed according to law. The *Carolina* statute requires graduates of medical colleges outside of the state to produce their diplomas to some medical college within the state, and be licensed only on the indorsement of the latter. The *Missouri* statute requires all physicians to be licensed by the newly created State Board of Health, and all itinerant vendors of drugs, nostrums, etc. (quacks), to pay a license fee of \$100 a month, under penalty of fine and imprisonment.

In *Missouri* it is unlawful to transport on any railroad "nitro-glycerine in a liquid form, except in car-load lots and in a congealed state, and *accompanied by the shipper.*" Most effective protection!

The practice of carrying deadly weapons, and the use of them by minors and persons intoxicated, has received attention from the legislatures of six states.

Missouri has increased the penalty for violation of her law against carrying concealed weapons; carrying deadly weapons to certain peaceable assemblages; exhibiting them in a rude, angry, and threatening manner; carrying them by

an intoxicated person, or selling or giving one to a minor. *New York* prohibits the carrying of pistols or other firearms in any city by any person under eighteen years of age. The carrying of concealed razors is prohibited* in *North Carolina*. *Rhode Island* makes it a misdemeanor to sell to any child under the age of fifteen any gun, pistol, or explosive cartridge. A *Vermont* statute, entitled "An Act to Preserve Human Life," provides that the selling, offering to sell, or giving away of any toy pistol is a misdemeanor, and any party violating the statute shall become liable for all damages that may accrue. In *Wisconsin*, the use and sale of pistols and revolvers by and to minors, and the carrying of the same by persons in a state of intoxication, are punishable by fine *and* imprisonment.

New Jersey has passed three acts relating to the proper care and treatment of children. The first permits municipalities to levy an annual tax of a sum not exceeding \$1,000 for the relief of indigent children; the second is an act for the prevention of cruelty to children, the particulars of which are unimportant; and the third relates to their employment in factories and workshops. Under its provisions the employment of boys under twelve and girls under fourteen years is absolutely prohibited; no child between twelve and fifteen shall be employed unless he or she shall have attended for twelve weeks during the preceding year, six of which shall have been consecutive weeks, and for five days or nights in each week, some public day or night school; and no child under fourteen years of age shall be employed for more than an average of ten hours a day, or sixty hours in one week. Any employer violating the provisions of the act is guilty of a misdemeanor.

* This was doubtless caused by the frequency with which our newly made citizens of African descent have made this peaceful instrument a weapon of terrible power.

New York has turned her attention to "baby-farming," and made it a misdemeanor for any person not licensed to receive or board more than two infants under three years of age at the same time and place. The statute does not refer to infants accompanied by their parents or guardians, nor to incorporations for foundlings.

In *Nevada*, insane convicts must be transferred to the lunatic asylum of the state.

Ohio requires hotels to provide fire-escapes which can be easily reached in case of fire, and, in all rooms above the second story, a good rope or other life-line for the guests must be provided; and *Pennsylvania* has passed an act on the same subject, of which I have seen only the title.

Pennsylvania has also passed an "act relative to the supervision or control of hospitals, or houses in which the insane are placed for treatment or detention," this supervision to be exercised by the Board of Public Charities, to which three members are added for the special purpose, one a physician, one a lawyer, each of not less than ten years' standing. These are to be appointed by the governor and confirmed by the Senate. Five persons from the board, among whom shall be the lawyer and the physician referred to, shall constitute a committee on lunacy. They shall select one of their number as secretary, who shall receive a salary of \$3,000 per annum, and his incidental expenses. This committee shall examine and report annually to the board on the condition of the insane and of all houses for their care, public and private.

All persons in charge of such houses are required to allow the committee free access at all times to the insane, and to furnish full information regarding them and their treatment. Reports of said committee are to be published annually with that of the board. The board shall have power,

with the consent of the chief justice and attorney general, to regulate the licensing or not licensing of all houses for the reception and care of the insane, to make regulations for their proper treatment, for their commitment and discharge, for the visitation of all such houses, and for the withdrawal of licenses.

The managers of all such houses are required to furnish reports to the committee as to the number of persons detained, their accommodation, food, clothing, the restraints imposed on them, and their means of communication with the outer world. The Board of Public Charities shall appoint in every county where there are houses for the care of the insane, local boards of visitors, who shall have free access to all means of information regarding the conduct of such houses. A record book shall be kept of all cases and facts of importance regarding the patients, which shall be open to inspection.

The act enters into many details to secure to the patients means of communication with their friends, attorneys, or physicians outside, and to prevent any unjust committal of any person, or to secure to any who are improperly detained the means of discharge.

Vermont also has turned her attention to the subject of insanity, and not only provided for the inspection of asylums and the treatment of patients, but has enacted that no person shall be detained as insane, except upon the certificate of two physicians of unquestionable skill and integrity, residing in the probate district in which such insane person resides, stating their reasons for adjudging such person insane. A next friend or relative of such person may appeal from their decision, and he or she shall not be detained in the asylum pending the appeal. A violation of this statute by trustees, officers, or employes of asylums is made a felony. The same state has declared pigeon-

shooting to be a misdemeanor, and has secured to convicts freedom of conscience and of religious worship.

In *Wisconsin*, the setting of spring guns for the purpose of killing game is punishable by imprisonment in the state's prison for not less than six months, nor more than three years; and if thereby the death of any person is caused, the offense becomes manslaughter in the second degree.

CRIMINAL LAW.

In *Alabama*, all defendants shall be permitted to make, not under oath, statements in their own behalf; and a failure to do so shall not militate against the prisoner, *nor be made the subject of comment against him.*

In *Arkansas*, the sale, circulation, or display of obscene literature shall be a misdemeanor. In the same state, dealing in futures is declared to be "*gambling*," and is punishable by fine *and* imprisonment.

Tennessee has declared the buying and selling of futures to be "gaming," and has made it a felony for any person to keep a room for the purpose of permitting, aiding, or assisting the playing of keno, faro, and other "gambling" games.

Colorado has established a system of criminal courts for the trial of misdemeanors, and all felonies except capital crimes, in which there shall be no grand jury, but the prosecution shall be upon information verified by affidavit of the district attorney. This state and West Virginia have both made prize-fighting a felony. The Colorado statute includes the aiding or abetting a prize-fight, while that of West Virginia makes the coming into the state for the purpose of aiding or abetting one, a misdemeanor.

Connecticut has enacted that the bodies of executed criminals shall hereafter be buried by the sheriff, and not given over to the family.

Connecticut has made bribery and fraud at caucuses criminal. She has also established a system of county coroners, one for each county, who shall appoint a medical examiner in each town to report untimely deaths to him; and has also delegated the pardoning power to a board of pardons, to be composed of the governor, a judge of the Supreme Court, a physician, and three other citizens.

Illinois has taken up the question of how to deal with *habitual* or professional criminals, and passed the following act, which, on June 21, was in the hands of the governor awaiting his signature:

SEC. 1. *Be it enacted*, etc., That whenever any person having been convicted of either of the crimes of burglary, grand larceny, horse-stealing, robbery, forgery, or counterfeiting, shall thereafter be convicted of any one of such crimes committed after such first conviction, the punishment shall be imprisonment in the penitentiary for the full term provided by law for such crime at the time of such last conviction therefor; and whenever any such person, having been so convicted the second time as above provided, shall be again convicted of any of said crimes committed after said second conviction, the punishment shall be imprisonment in the penitentiary for a period of not less than fifteen years; *Provided*, That such former conviction or convictions and judgment or judgments shall be set forth in apt words in the indictment.

SEC. 2. On any trial for any of said offenses, a duly authenticated copy of the record of a former conviction and judgment of any court of record for either of said crimes against the party indicted shall be *prima facie* evidence of such former conviction, and may be used in evidence against such party.

Florida has made the false and malicious imputing of unchastity to any woman a misdemeanor.

In *Nevada*, the alteration of any draft of a bill presented to the legislature, or the enrolled copy of any bill which has passed, or the bribing or offering to bribe any legislator shall hereafter be a felony.

North Carolina has made it a misdemeanor for a landlord to seize the crop of a tenant when no rent is due.

Tennessee has made it a felony for any bank officer or any employé of a bank to receive deposits when he has reason to believe that the bank is insolvent, and the money is lost by the failure of the bank.

Wisconsin has passed several noteworthy criminal statutes: In criminal trials, if the jury shall find that there was reasonable doubt of the sanity of the accused at the time of the commission of the offense, they shall find him not guilty for that reason. When change of venue is applied for on the ground of prejudice in the mind of the judge, the court may make an order requesting the judge of an adjoining circuit to preside in his stead, in lieu of changing the venue. The keeping, management, or maintenance of policy-shops is made a misdemeanor. Any male person of the age of sixteen or upwards, being a vagrant, who shall be found within any town, city, or village, having at the time no visible means of support, and not being an actual inhabitant of such town, or who shall be found drunk and disorderly, shall be deemed a tramp, and on conviction, shall be punished by imprisonment in the county jail not less than fifteen days, and kept on bread and water only, or by imprisonment in the state's prison not exceeding one year.

Minnesota has re-established the death penalty in all convictions of murder, unless the court certifies to extenuating circumstances, in which case the punishment shall be imprisonment for life. The same state has made the willful and careless destruction of baggage a misdemeanor.

The state of *Maine* has also re-established the death penalty.

In *Missouri*, whenever a jury shall acquit any prisoner on the ground of insanity, they shall not only so state in

their verdict, but shall further find whether or not he has entirely recovered. If they find that he has recovered, he shall be discharged; otherwise "the prisoner shall be dealt with as provided in the two following sections" of the Revised Statutes.

PRACTICE AND PROCEDURE.

Alabama and *Colorado* have enacted that witnesses shall not be incompetent by reason of conviction of crime, but the fact of the conviction may go to the jury on the question of credibility. The *Colorado* statute includes all crimes, while that of *Alabama* excepts from its provisions perjury and subornation of perjury.

Colorado has fixed the number of juries in all civil cases at six, unless the parties shall agree upon a less number, or the court, in its discretion, allows a greater number, not exceeding twelve; while *North Carolina* has reduced the number composing "dower juries" to three.

Colorado has enacted that in criminal cases the charge of the court must always be in writing, and, if so requested, delivered before the argument of counsel.

In *Florida*, a party pleading over or amending after demurrer sustained does not thereby lose his right of exception, and may assign the decision sustaining of the demurrer as error.

Missouri, *Ohio*, and *Tennessee* have each organized by statute a Supreme Court Commission, intended to relieve their supreme courts from the great pressure which seems to be upon them. The *Missouri* statute is a lengthy one, and authorizes the Supreme Court, by order of record, with the concurrence of four judges, to appoint three commissioners, who shall have the same qualifications and take the same oath as the judges themselves, and whose appointment shall last for two years, within which time, however,

their services may be dispensed with by the court or by the abolition by law of the commission. The court may submit to them such pending causes as parties may agree upon, and all causes submitted on brief and without argument; and upon the rendition of judgment by the court upon report of the commission, "the right to a rehearing is saved to the parties" by the statute. The commission shall make to the court a report stating which of them concurred and which dissented, and dissenting members may also file reports. Says the act: "Every report shall contain a concise but comprehensive statement of facts in the case, a brief statement of the points, and citation of the authorities of counsel, the opinion of the commissioner or commissioners submitting the report, and a citation of the authorities relied on in support of the opinion." The court may approve, modify, or reject the report; and when approved, it is published as the opinion of the court, prefaced with a brief statement showing which commissioner prepared it, who concurred or dissented, and whether it was modified or not, and with the concurrence of which judges. Whenever the court shall reject the report, the opinion shall be prepared and like proceedings had as in other cases submitted to the court. The *Ohio* statute is brief, and authorizes the governor, with the confirmation of the Senate, to appoint a commission of five members, who shall hold office for two years, "to dispose of such parts of the business on the dockets of the Supreme Court as shall, by arrangement of said court and said commission, be transferred to said commission: and said commission shall have like jurisdiction and power in respect to such business as are or may be vested in the Supreme Court." The decisions of the commission shall be "certified, entered, and enforced as the judgments of the Supreme Court." They seem to be a second Supreme Court with concurrent jurisdiction. *Texas*

has also extended the provisions of a similar act, which seems to find favor with the bar.

The *Tennessee* statute establishes a Supreme Court Commission of Referees. The judges of the Supreme Court are authorized to appoint the members, and to refer to them such causes (except revenue causes) as they may select, "for investigation, and report upon the facts and law." The reports are to be made to the court for such action thereon as may seem to be proper, and are subject to exception, to be filed within a time limited; and, upon exceptions filed, the cause stands for argument before the court.

Missouri has relieved her Supreme Court from the necessity of preparing or filing written opinions "in any cause except such as shall be remanded for rehearing, or shall in the judgment of the court involve a principle or question not settled in an opinion of the court previously delivered, and reduced to writing and filed;" and has also enacted that when in the judgment of the court it becomes important for them to inspect the original of any exhibit, pleading, motion, bill of exceptions, or other paper filed in the cause in the trial court, it may require the original to be sent up from the court below.

The same state has enacted that the fact of incorporation or copartnership of any party or parties, when alleged in any pleadings, need not be proved unless denied under oath.

In *New York*, instruments which are not required by law to have a subscribing witness, but which have been witnessed nevertheless, may be proved without his evidence, as if there were no such witness; and in the same state, upon the hearing of an application to vacate upon notice an injunction order, the court or judge must, where the alleged wrong or injury is not irreparable, and is capable of being adequately compensated for in money, vacate the

injunction order, upon the defendants executing an undertaking in such form and amount and with such sureties as the court or judge shall direct, conditioned to indemnify the plaintiff against any loss sustained by reason of vacating such injunction order.

Ohio has by statute permitted her district courts, upon motion of one or both sides, when an important or difficult question of law arises, to reserve the cause, after finding all the facts, for the decision of the Supreme Court, provided the court is unanimous in the opinion that the cause should be reserved.

South Carolina has passed an act regulating the number of peremptory challenges to jurors to which each party shall be entitled in civil and criminal cases. In the former, each party is entitled to two such challenges alternately, and the right shall extend to jurors drawn to fill the place of those challenged. In murder, manslaughter, burglary, arson, rape, or grand larceny cases, the defendant shall have twenty peremptory challenges, and the state two; and in all other criminal cases, the defendant five, and the state two.

Michigan has passed a novel, but *very* important act to admit to probate the wills of persons still living, so as to test their testamentary capacity, while they are in life, to answer charges against them. The people are growing weary and angry with the manner in which the reputation and the last wishes of deceased persons are treated, and thus seek a remedy.

ACKNOWLEDGMENTS.

Missouri has adopted the statute on the subject of acknowledgments of deeds, etc., which was recommended at the last meeting of this Association.

In *New York*, conveyances of lands in that state, which are executed in Great Britain or Ireland, or any of the

British possessions, may be acknowledged before the mayor, provost, or chief magistrate of any city or town, or before any United States consul; and *North Carolina* has enacted that wills may be authenticated in foreign countries by any ambassador, minister, consul, or commercial agent of the United States.

HUSBAND AND WIFE—MARRIAGE AND DIVORCE.

Alabama has provided for the disposition of the dower interest of an insane married woman, by the ascertainment by the probate court of the value of the interest, and the appointment of a guardian to dispose of it and administer the proceeds.

Florida has passed a similar statute, which also provides that the circuit judge (who in that state appoints the guardian) may exact from the husband security for the wife's maintenance.

The rules of law as to the competency of husband and wife as witnesses for or against each other have been changed in some of the states.

In *Arkansas* they may testify in behalf of each other as to business transacted by one for the other in the capacity of agent. In *Colorado* they may be examined on either side with the consent of the one who is a party to the suit; and in *Vermont* the libellant and libellee are both competent witnesses in divorce cases.

Georgia has enacted that upon the death of the husband intestate, without lineal descendants, the wife (who is his sole heir) may, upon the payment of his debts, if any, "take possession of his estate without administration, sue for and recover the same."

In *Minnesota*, the statute recommended for adoption at the last meeting of this Association, which limits the jurisdiction of the courts in divorce cases, has become a law.

Missouri has a statute permitting married women to sue as *femme sole* for personal property belonging to her as her separate estate.

The statute of limitations has been so changed in *Ohio* as not to except married women from its operation, when the action is concerning their separate property, or growing out of or concerning business transacted in their own name.

An act of the legislature of Pennsylvania, "authorizing married women and their husbands living separate and apart under a deed of separation or mutual agreement, to sell and convey their separate real estate free and clear of rights of dower and curtesy and other interests," was vetoed by the governor, who made a noble protest against the present tendency towards the impairment of the sacredness, and weakening the strength, of the marriage tie.

Colorado has defined the degrees of relationship necessary to constitute incestuous marriage, "and all marriages between negroes or mulattoes of either sex and white persons are also declared to be absolutely void." The act provides that nothing therein contained shall be so construed as to prevent persons living in that part of the state acquired from Mexico from marrying "according to the customs of that country."

In *Vermont*, actions brought to annul marriages on the ground of coercion in entering into them may be prosecuted after the death of the suitor by any "parent or relation interested."

Wisconsin has relieved husbands from liability for the personal torts of their wives.

LIQUOR TRAFFIC.

In *Arkansas*, absolute prohibition may be enforced within three miles of any church, school, or university, on petition of a majority of the adult inhabitants, and the sale of liquors

within the same distance of the State Industrial School is prohibited by statute. It is declared to be a misdemeanor for any person not having a license to effect a clandestine sale of liquor by the device known as the "blind tiger," or any other device whatsoever.

The Supreme Court of *Florida* has sustained as constitutional a recent act prohibiting the granting of licenses except upon petition of a majority of the qualified voters of the election district in which the liquors are to be sold. The Supreme Court of *Iowa*, on the other hand, has declared that the amendment to the constitution of that state, adopted by vote of the people in June, 1882, which absolutely prohibited the manufacture and sale of liquors, wine, and beer, is unconstitutional, null, and void, on the ground that the proper steps were not taken for its adoption.

North Carolina has repealed her prohibitory law noted by your President two years ago.

Vermont has passed a sweeping and searching act on this subject, which I give at length:

No. 41.—An Act to Amend Section 3,800 of the Revised Laws.

It is hereby enacted, etc.,

SEC. 1. That section 3,800 of chapter 169 of the revised laws be so amended as to read as follows:

No person shall, except as otherwise specially provided, manufacture, sell, furnish, or give away, by himself, clerk, servant, or agent, spirituous or intoxicating liquors, or mixed liquor of which a part is spirituous or intoxicating, or malt liquors, or lager beer; and the phrase "intoxicating liquors," where it occurs in this chapter, shall be held to include such liquors and beer.

The word "furnish," where it occurs in this chapter, shall apply to cases where a person knowingly brings into or transports within the state for another person, intoxicating liquor intended to be sold or disposed of contrary to law, or to be divided among or distributed to others.

The words "give away," where they occur in this chapter, shall not apply to the giving away of intoxicating liquor by a person in his own private dwelling unless given (to a minor other than a member of his own private family or) to an habitual drunkard, or unless such private dwelling becomes a place of public resort. But no person shall furnish or give away intoxicating liquor at an assemblage of persons gathered to erect a building or a frame of a building, or to remove a building, or at a public gathering for amusement.

Nothing in this chapter shall prevent the manufacture, sale, and use of wine for the commemoration of the Lord's Supper, nor the manufacture, sale, and use of cider, or, for medical purposes only, of wine made in the state from grapes or other fruits the growth of the state, and which is without the admixture of alcohol or spirituous liquor, nor the manufacture by any one for his own use of fermented liquor; but no person shall sell or furnish cider or fermented liquor at or in a victualling house, tavern, grocery, shop, cellar, or other place of public resort, or at any place, to an habitual drunkard.

Approved November 2, 1882.

Statutes upon this subject enacted by *Illinois*, *Missouri*, and *Ohio* have excited much public comment. The *Illinois* statute, known as the "Harper bill," is a "high-license" law, and prohibits corporate authorities from granting any license for a less sum than five hundred dollars per annum, except licenses for the sale of malt liquors alone, in which case one hundred and fifty dollars shall be the minimum.

The *Missouri* "Dramshop Law," as it is termed in the statute book, is amended in several particulars. No license shall be granted in cities and towns having a population of more than 2,500, except upon petition of a majority of the assessed tax-paying citizens in the block or square where the dramshop is to be located; and in the towns having a population of less than 2,500 the same petition is required, as well as that of a majority of the assessed tax-payers of the

whole town. The bond required of the licensee is increased from one to two thousand dollars, and must be conditioned for the payment of all fines, penalties, and forfeitures that may be adjudged against him under the provisions of the act. In addition to the former state tax on the license of a sum not less than \$25, nor more than \$200, there is now levied a county tax of a sum not less than \$250, nor more than \$400. Any licensee who is convicted of selling liquor on the sabbath shall not only be fined, but shall also forfeit his license, and be barred for two years from obtaining another. No dramshop keeper shall sell to any "habitual drunkard," after being notified by the wife, father, mother, brother, sister, or guardian of such habitual drunkard, not to sell or furnish liquor to him, and any such notice shall be deemed to be a continuing notice; if the licensee disregard the notice, the person who gave it may recover of him (by action at law), for each offense, a sum not less than fifty, nor more than five hundred dollars.

The constitutionality of the "Scott Liquor Law" of *Ohio* has been tested before her Supreme Court, and established by its decision. It assesses upon each place where spirituous, malt, and vinous liquors are retailed, the sum of \$200 a year; where only malt or vinous liquors are retailed, \$100 a year; and this assessment is made a lien upon the premises. The owner of the premises is scarcely protected by the provision making it a misdemeanor to retail liquors without his consent. . Twenty per cent. of the assessment is added as a penalty for non-payment when due. The sale of intoxicating liquors on Sunday, except by a licensed druggist, on the *bona fide* prescription of a reputable physician, is made a misdemeanor; and all places where liquor is sold must be closed on the Sabbath. The right is reserved to municipal corporations to regulate and control the sale of beer and native wines on the Lord's Day, and to "regulate, restrain,

and prohibit ale, beer, and porter houses, and places of habitual resort for tippling and intemperance." Selling liquor at any time to minors or intoxicated persons is made a misdemeanor.

This subject now claims such a large share of public attention, that much time and space are given to it in this summary. There is a crying evil abroad which calls for a remedy, and it is to be hoped that the friends of temperance will not be discouraged by the vast difficulties, both in principle and practice, which they encounter. Yet there is much ground for fear that the *intemperate* pursuit of their cause by its friends, may trench so far upon individual rights, as to produce reaction and ultimate failure.

PRESERVATION AND ADORNMENT OF PARKS AND HIGHWAYS.

Missouri and *Nevada* have passed joint resolutions instructing their senators and requesting their representatives to use all honorable means to prevent the leasing of the Yellowstone National Park, and to hasten the enactment of a law for its government, protecting its natural curiosities, timbers, lakes, and rivers, and prohibiting the destruction of its animals, birds, and fishes; and *New York* has passed an act authorizing the selection, location, and appropriation of certain lands in the village of Niagara Falls as a state reservation for the purpose of preserving the scenery of the Falls of Niagara.

New York holds out encouragement for the planting of shade trees on highways, by abating the highway tax of any person who does set them out, to the amount of one dollar for every four trees, the abatement not to exceed one-fourth of the tax.

Rhode Island has endeavored to preserve "Easton's Beach, in Middletown and Newport," by making it a misdemeanor for any one to remove sand or gravel from it.

All this is in the direction of a more cultivated state and a higher civilization.

MISCELLANEOUS.

In addition to the subjects of legislation which have been noticed, several of the states have made noteworthy changes in their statute law which can only be classed as miscellaneous.

Alabama has created a Department of Agriculture, by a statute which also provides for the inspection of fertilizers.

Vermont has enacted a very stringent statute requiring all commercial fertilizers offered for sale within her boundaries to be branded with the weight of the sacks, constituent parts, etc., and making a violation of the law a misdemeanor.

In *Arkansas*, a defendant cast in an ejectment suit, who has made improvements on the property in litigation, in the *bona fide* belief that he was the legal owner, shall be compensated by the successful plaintiff for the value of the improvements before he can be ejected.

Arkansas, *Colorado*, and *Pennsylvania* have passed statutes requiring that assignees of insolvent debtors for the benefit of creditors shall enter into bond with surety for the faithful discharge of their duties, and file, in court, reports of their actings and doings.

Illinois has enacted that, in voluntary assignments, laborers' and servants' wages, earned within the preceding three months, shall be paid as preferred claims; while in *Wisconsin*, assignments made for the benefit of creditors, giving preference to one creditor over another, except for the wages of laborers, servants, and employes, earned within six months prior thereto, shall be void.

Bearing upon a kindred subject is the statute of *Ohio*, providing that claims not exceeding \$150 for manual labor performed for a deceased person within twelve months of

his death, shall be considered as preferred debt against his estate.

In *Colorado*, the bodies of such persons dying in any almshouse, prison, hospital, house of correction, or jail, "as may be required to be buried at the public expense," shall be surrendered "to any licensed physician in the state, to be by him used for the advancement of anatomical science, preference being given to the faculty of legally organized medical colleges or schools of anatomy, for their use in the instruction of medical students;" but no such body shall be so surrendered if the deceased, during his illness, requested to be buried, or if his relatives or friends claim his body for burial within twenty-four hours, or if he was a stranger or traveller who died suddenly before making himself known. The remains, after dissection, must be decently buried.

Missouri, by joint resolution of her legislature, has declared the former bankrupt law of the United States to have been productive of much harm, and instructed her senators, and requested her representatives in Congress to oppose the enactment of a new one.

Nevada and *Ohio* have abolished the distinction between instruments under seal and those not under seal, the former enacting that "the word 'Seal,' and the initial letters 'L. S.,' and other words, letters, or characters of like import, opposite the name of the signer of any instrument in writing, are hereby declared unnecessary to give such instrument legal effect, and any omission to use them by the signer of any instrument shall not be construed to impair the validity of such instrument;" and the latter that "private seals are abolished, and the affixing of what has been known as a private seal to any instrument whatever shall not give to such instrument any additional force or effect, or in any way change the construction thereof." Bonds and deeds and

other instruments conveying real estate shall be *signed* in the presence of two witnesses.

Nevada has passed a special act to admit to probate a paper purporting to be the will of one George P. Blair as though it had been sealed with the seal of the testator. Interesting to inquire what rights would vest or could be divested under this act.

All goods manufactured in the *New Jersey* state prison must hereafter be "stamped in a legible and conspicuous manner with the words 'Manufactured in the New Jersey state prison.'"

A joint resolution of the *New Jersey* legislature requests Congress to abolish compulsory pilotage upon vessels engaged in the coasting trade; and another authorizes the governor to prepare and have presented to each officer and man of the New Jersey Battalion a medal to commemorate their good conduct at the Yorktown Centennial.

New York has passed an act providing that executors authorized by will to sell real estate may, unless the will otherwise direct, sell either at public or private sale, and on such terms as may seem to them most advantageous to the parties interested; and also a second act providing that, where two or more executors, as such or as trustees, have power given them to sell, mortgage, or lease, and any of them shall fail to qualify, the other or others shall enjoy the power fully.

New York has enacted that homestead property shall not be exempt from sales for taxes; *Vermont* has made the tool-chest of a mechanic exempt from levy and sale; and *Wisconsin* has declared that the earnings of all married persons, or persons having a family to support, shall be exempt for three months to the extent of sixty dollars a month.

North Carolina now requires that conditional sales of personal property shall be reduced to writing, and recorded.

Pennsylvania has passed "An act prohibiting the levying of license tax upon persons taking orders for goods by sample for individuals or companies who pay the tax at their chief place of business," of which I have seen only the title; and has also enacted that when any wire used for electric purposes is attached to, or shall extend over any building or land, no prescriptive right to maintain it there shall arise by lapse of time.

An act to establish and determine the boundary line between *Rhode Island* and *Massachusetts* has been passed by the former state, to take effect only when a similar act shall have been passed by the latter.

Wisconsin has enacted that no contract for the purchase, sale, transfer, or delivery of personal property, to be delivered and paid for at a future day, shall be void when either the buyer or seller shall, in good faith, *intend* to perform the contract.

All the information I have been able to obtain from the state of *Maine* is that the legislature, after sitting for a short while, adjourned over until late in August, for the purpose of embodying the acts of the present session in the new revision which has been provided for. The restoration of the death penalty is the only noteworthy act to which my attention has been called. The legislature is probably now in session, as is also the legislature of Georgia. The legislature of *Pennsylvania* is also now in session, and its laws not published.

CONCLUSION.

A closer examination into the year's legislation than is accomplished by this hurried glance, while it makes an exhibit of much that tends to ameliorate the condition of man and improve his belongings, yet leaves us painfully conscious of the merely tentative and experimental character of nearly all these efforts. The evils which press at

the moment are attempted to be legislated out of existence at a single blow. Real or fancied wrongs are to be righted by partial and short-sighted enactments. Disappointed suitors procure the passage of laws to give them a "better chance next time." A very small number of these statutes either assert or adhere to any great principle of action, or give evidence of high moral standard, or of that practical sagacity familiarly known as common sense, which will enable them to stand the scrutiny and test of time. Undue haste, inconsiderate action, controlling prejudice, and temporary passion, are written all over them.

How pleasant and refreshing to us, gentlemen of the Association, to turn from the consideration of this most imperfect statutory mechanism, to the law as we find it written in the decisions and opinions of the great judges of England and America—to those expositions, based upon the immutable principles of right and justice, which settle principles on such a firm foundation as to furnish guides for all future action; opinions which embody enlarged views as to the relations which individuals sustain to each other and to the State, as to the true office and duty of government, and the great moral forces which should control enlightened communities. When we see how satisfactory, how all-pervading, how permanent are the results thus accomplished by our profession, as a whole, it is indeed cause for grateful and intense pride in its achievements and traditions.

Much has been said, and sometimes flippantly, of the encroachments by "judge-made law." Even though such accusations are not entirely without foundation, how much has been thus done in the announcement of truths and principles of action from the bench, which now constitute the treasury of the law! If Lord Mansfield *made* the law merchant of England—which also became that of

America—if Chief Justice Marshall *made* the constitutional law of the United States, as has been charged, how well did they build! Who so rash to-day as to question the amazing skill and complete success of those peerless architects! How many decades, and how many legislatures, composed each of hundreds of men, would it take to establish such principles, and work out such beneficent results, and insure their acceptance by the coming generations!

We are certainly excusable if such reflections as these cause us to "magnify our office" and glory in our vocation. Whatsoever there is of capacity for good in us, can be best developed by an Association like this. We live in an age which illustrates in every department of human action the power of associated effort. In the realm of those moral forces with which we have specially to deal, is not the superior power of associated effort intensified? Whether we like it or not, we must be powerful for good or evil. Great indeed is our responsibility.

There may be differences of opinion as to the character of the age in which we live—whether it is more than ever before a money-loving age; certainly it is a money-getting age, beyond precedent. Perhaps men loved "filthy lucre" in the luxurious days of Greece and Rome, as they now do; but there were controlling influences then against this absorbing power, which do not now exist. The real trouble with us to-day is not the mere love of money as a possession and a treasure; for the pursuit of wealth is not only a right, but often a duty, and the use of it, when acquired, a great pleasure and high privilege; but it is the self-prostration of society before it as a "dignity, a principality, a power." In this worship is often surrendered talent, learning, every high and noble aspiration, and even the gentler graces and more refined charities of life. Against this deification and absorbing power of wealth, what stronger bulwark can be interposed

than the associated resistance, and the example, of an intellectual and learned profession: powerful in influence, intimate and controlling in its necessary connection with every variety of human affairs, trained to vigorous and independent thought and effective speech? If it but dare assert its dignity and character, there is no social agent which has half its power to curb and reform society. But, to accomplish all this, we must be true, and brave as well. Not only must honor be the guide of our own conduct, but we must make no terms with dishonor—for demoralization often comes not so much from joining in the outright commission of sin, as from the halting, unmanly acquiescence by which we condone it.

The theme is pleasant, and the glow of excitement causes me to transgress.

I close with the testimony of those whose higher claims and greater achievements in the profession justify me in substituting their words for my own: "The influences of our profession are as wide as society; its duties are arduous, refined, delicate, and responsible; its honors and rewards, when fairly sought and earned, may fill the measure of a great ambition; we cannot be too wise, too learned, or too virtuous for it; we can make all knowledge tributary, and yet not transcend its compass."* Still another witness: "I bear this testimony concerning our great profession,—the more I have seen of it, the higher has risen my estimate of its dignity, usefulness, and importance. . . . In it may be found as pure, noble, truthful, and generous men as ever adorned the pulpit or the senate. Below either, it can never fall, so long as those who practice it are faithful to the trust committed to their hands by its great masters." †

* Hon. S. T. Wallis, of Baltimore.

† Hon. William A. Porter, of Philadelphia. Paper on "The Qualifications of the Adviser and the Advocate."

PAPER

READ BY

ROBERT G. STREET.

How far Questions of Public Policy may enter into Judicial Decisions.

“In a government in which the departments are separated from each other, the judiciary, from the nature of its functions, will always be the least dangerous to the political rights of the Constitution. The Executive dispenses the honors; the Legislature commands the sword; the Judiciary has no influence over either the sword or the purse. It may truly be said to have neither force nor will, but merely *judgment*.” Thus truly and beautifully wrote Mr. Hamilton with respect to the judiciary department of the grand design in government then proposed by the Constitution of the United States.

But it is questionable if the experience of nearly a hundred years has verified the prediction that the judiciary department of our government is the “least dangerous to the political rights of the Constitution.” And yet, as will appear, it may not, in this respect, be necessary to impugn the wisdom of Mr. Hamilton’s political philosophy.

From *Marbury vs. Madison* down to the present time, the judiciary department of the Federal Government has been the final resort of political parties on the greatest questions of public policy that have agitated the country.

The history of the origin and development of this superstitious belief in the omnipotence of the judiciary; its supposed power to annul acts of Congress—laws which have received the sanction of both of the other theoretically co-ordinate departments—to fix the limits of independent branches of the sovereign power, and say to them "Thus far and no farther," cannot fail to be both interesting and instructive to students of politico-legal science throughout the world, of whom, it should not be forgotten, a very large number still look on the government of these United States as experimental and phenomenal. Such inquiry would embrace an examination into the genius of our people, their conservatism and reverence for judicial authority, their revolt against the tyranny of political assemblies so luridly portrayed in the contemporaneous history of the French Republic, as well as the reactionary force incident to successful revolution against the then recent heritage of wrong set forth in the "Declaration of the Independence of these Colonies."

That the judiciary department should have the power, in "cases" of jurisdiction, to declare its opinion against the validity of statutes, because in conflict with what is deemed by the judges a true interpretation of the Constitution, and, on that ground, to disregard them, was foreseen and intended by the framers of that instrument; but it may be confidently affirmed that at the time of the adoption of the Constitution there was no purpose to vest in the courts power to annul and set aside an act of Congress. No court ever before possessed a jurisdiction so preeminent over the political power of a state, and it is inconceivable that it was intended by the philosophers, statesmen, and jurists who framed the Constitution, that the first institution of this novel power on earth should be left to inference and conjecture against the express and fundamental theory of co-ordination in the legis-

lative, executive, and judicial departments of the government. And while the debates on the adoption of the Constitution show that difference of opinion—whether the Constitution was to receive a strict or liberal construction—had its origin there, yet the effect on the other departments and the people of even the mere incidental expression of opinion by the judiciary on the constitutionality of laws in the course of the disposition of “cases” could not then have been anticipated, because the segregation of opposing political parties, so long to control the destinies of the country, on these conflicting theories of construction, was not itself appreciated.

The judiciary has become a factor in the political power of the government, never contemplated in its origin.

Neither Marshall, Kent, nor Story—though advocating with learning and eloquence this power in the courts to annul legislative acts—have ever sought to show the consistency of its existence in one of the departments with the theory of co-ordination in the three departments. They seem content to accept its devolution upon the judiciary as a “happy accident;” and it seems now generally to be thought that the wisdom and impartiality of the judges will always furnish a sufficient guarantee against its abuse, and, perhaps, even against error itself.

Happy the nation from whose history this *a posteriori* argument can be drawn, however obvious its fallacy! Happy the people whose experience shall justify the confidence supposed thus to have been reposed by the founders of the government in their practical sagacity, however hazardous the experiment!

A primitive and original method of exercising this power is said to have obtained at an early day in one of the most southern of our states, where, upon the adjournment of the legislature, and before the beginning of the succeeding terms of the courts at *nisi prius*, it was the custom, at the

meetings of the bar called for the purpose, his Honor presiding, to determine what acts of the last legislature should be regarded as operative, and what ignored as unwise or inexpedient; and thenceforward it was deemed disrespectful to the court to cite those thus set aside.

I trust I shall not be considered wanting in like respect because undertaking to expose a gross delusion which, persisted in, is calculated to bar the progress of our civilization and the development of the science of republican government, and to prevent the modification and adaptation of the public policy of the country to the requirements of constantly changing conditions and relations. Is it possible that, upon the question of the existence of the power in the government to pass an act responsive to those requirements, and to determine whether a particular act is "appropriate means" of executing certain political powers—the sole question in these cases—the decision of the Supreme Court of the United States is forever conclusive, as well upon the other departments as upon its own?

Mr. Bentham, in his universal criticism on Blackstone's *Commentaries*, severely censures all "judiciary" or "judge-made law," or "judicial legislation," because of its alleged tendency to pursue processes of reasoning peculiar to the legal profession; and hence he characterizes it as law made by "Judge & Co.," being evidently of the opinion that the study of this sort of law "tended to sharpen, but not to enlarge, the faculties of the mind." If the practising lawyer could be made to understand that he was anything more than a "sleeping partner" in the concern—that he could even vote as in the sometime meetings of the bar alluded to—he would probably be more acquiescent in its wisdom and expediency than he is generally understood to be. But "judiciary law," in the broad sense intended by Mr. Bentham, includes the whole body of our laws denomi-

nated by the common-law lawyer, "unwritten law." If his criticism was applicable to "judicial legislation," as that term is generally understood, it would not be regarded by the professional lawyer as an objection; for *his* objection is that the *ratio decidendi* in such case is based on supposed considerations of public policy, good morals, and natural justice; the idea of the particular judge what the law ought to be, and not, as it should be, on the ascertainment, upon deduction by legal reasoning and analogy, of what the law is.

Although long a principle of universal acceptance among political scientists, that there can be no liberty without the separation into co-ordinate departments of the legislative, executive, and judicial powers, yet, says de Tocqueville, "I am not aware that any nation on the globe has hitherto organized a judicial power on the principle adopted by the Americans. . . . It has been claimed, but claimed in vain, by the courts of justice of other countries." And the learned and liberal writer speaks eloquently of the power vested in our courts of pronouncing a statute unconstitutional, as "one of the most powerful barriers that has ever been devised against the tyranny of political assemblies."

Mr. Jefferson said that his construction was, "that each department of the government is truly independent of the others, and has an equal right to decide for itself what is the meaning of the Constitution in the laws submitted to its action;" and he referred to the "Alien and Sedition Laws" and *Marbury vs. Madison*, as instances in which he entirely disregarded, in the discharge of his executive duties, devolved upon him as President, the opinions of the courts upon the questions involved.

The question whether a sovereign power has been granted by the Constitution of the United States is a great public and political question, and the decision of the Supreme Court of the United States has, upon such question, and is entitled as

such to, no other effect than that of mere finality between the parties, with the obligation upon the subordinate branches of that department, the judiciary—of which that court is the head—and perhaps upon all courts whatever, to follow such decision “until and unless” the Supreme Court of the United States shall otherwise decide; that is, shall overrule its own decision.

Any narrow rule of legal construction, any timorous theory of statesmanship, by which it shall be sought to devolve upon either one of the co-ordinate branches of the government the power of determining for the others, or of determining for the people, with whom the ultimate sovereignty resides, questions affecting the grant of sovereign power, is necessarily subversive of that co-ordination of executive, legislative, and judicial power regarded by the statesmen who laid the foundation-stones of the Republic as embodying its peculiar beauty and its superior strength. The only principle of *stare decisis* that is applicable to questions of this nature is uniform practice, consecrated by time and sanctified by common consent. Uniformity of construction is indeed desirable, but not at the expense of the destruction of uniformity of the original design.

The grant of legislative, executive, and judicial power in the Constitution is alike express: “All legislative power herein granted shall be vested in a Congress of the United States.” “The executive power shall be vested in a President of the United States,” and “The judicial power of the United States shall be vested in one Supreme Court and in such inferior courts as Congress may from time to time ordain and establish.”

The distinction between political and judicial power is acknowledged, if not well defined. The judicial power extends to the determination of “cases,” not questions. And if the incidental expression of opinion by the court upon ques-

tions of the nature of those under consideration is indeed the ultimate determination of such questions, while the judiciary feature of our government may deserve de Tocqueville's commendation as presenting "one of the most powerful barriers ever devised against the tyranny of political assemblies," it cannot be said, in the language of Mr. Hamilton, "to be the least dangerous to the political rights under the Constitution."

There is no power in the courts to annul an act of Congress, but only to decide "cases;" there is no chancellor, or *cancellaria*, in the Constitution; and there is no greater warrant in the Constitution, or in the theory of this government deduced from contemporary exposition, for attributing such power more to one department than another. There is no power anywhere to annul an act because deemed unconstitutional. The President may declare that, in his opinion, an act is void because unconstitutional, and refuse to enforce it; and so may the courts; but neither can control the other; and hence it is obviously inaccurate to say that the court finally determines the constitutionality or unconstitutionality of a law. The Legal Tender Acts were declared unconstitutional in *Hepburn vs. Griswold*; but if this were indeed an authoritative establishment that those acts were null and void, vitality and constitutionality could not subsequently have been imparted to them by the declaration of their constitutionality in the Legal Tender Cases in 12 Wallace. If the former was an authoritative declaration of *status*,—was, in fact, anything more than the mere expression of opinion or reasons for the particular judgment—then the latter was judicial legislation by the wholesale; it was to enact a law where previously there was none.

The office of construction is indeed ordinarily said to be a judicial act; but if each department of the government may be truly said to be supreme within its sphere, and to be in-

dependent of the others, it must result that the legislative branch, in the passage of an act, must judge for itself whether political power in a given case is granted or prohibited. And so the President must judge for himself in the execution of the law, and so the court in its administration.

If the functions performed by Congress, by the President, and by the courts are respectively legislative, executive, and judicial, so long as neither invades the province of any other, it is acting within its appropriate sphere; and whether wisely or unwisely, constitutionally or unconstitutionally, so far as affects its own action, it is itself the exclusive judge.

The judiciary can no more annul an act of Congress on the ground of its unconstitutionality than Congress can set aside a decree of the courts because without jurisdiction.

It is, perhaps, in this independency of opinion and of action with respect to the scope and limitations of constitutional power; this separate right and duty of each of the co-ordinate departments; this requirement that each shall view and determine these grave questions for itself, and neither for the other, from its own point of view, and upon its own responsibility, under the influences and by the processes of reasoning peculiar to each, that the greatest safeguard is to be found at once against the tyranny of political assemblies, the ambition of an executive, and the rigidity of the non-progressive and inelastic rules and principles that in general control judicial decision.

Superficially, this may seem to present a scene of discord and confusion, of conflicting views and opposing actions, of constant danger of contact between irresistible forces and immovable bodies; but this is more fanciful than real; and any actual danger inherent in it must be more than compensated by disabling any one department from curtailing the American Constitution of its fair proportions.

A construction of the constitutional powers of the government, concurred in by each of its co-ordinate branches through a long period of time, would be a decision of such a question by a high court of competent jurisdiction, and such a decision as alone would carry with it the weight and conclusiveness requisite to secure general acquiescence. This power claimed on behalf of the courts, and deemed by some so essential to the perfection of a system, which is yet so subversive of our system of co-ordination, has never obtained for itself practically the sanction of such common consent.

The Executive did not acquiesce in it in case of the "Alien and Sedition Laws," or in *Marbury vs. Madison*; and the same department signally dissented from the decision against the constitutionality of the "Legal Tender Acts." The "*Dred Scott*" case was not acquiesced in by Congress or the people; and had the court entertained the case of the State of Mississippi against Stanton, and held the "Reconstruction Acts" unconstitutional, it cannot be doubted that that decision also would have been disregarded in political action. To the conservative rule early adopted by the courts—that a statute should not be declared unconstitutional unless it is clearly so—is largely due the infrequency of such differences.

Many of the rules of construction adopted by courts of law are most useful to a true exposition of the Constitution of the United States; but that all of those rules are applicable, or, if applicable, adequate to a full exposition of the sovereign powers of the government, is denied. True statemanship will diligently explore the debates of the conventions, and the writings of the statesmen who laid the foundations of this government, as the most honored sources of a correct interpretation of the Constitution; yet there is no method of construction in general more repro-

bated by courts. Mr. Jefferson's second canon was: "On every question of construction [of the Constitution] we should carry ourselves back to the time when the Constitution was adopted; recollect the spirit manifested in the debates; and, instead of trying what meaning may be squeezed out of the text or invented against it, conform to the probable one in which it was passed." Mr. Justice Story offers nineteen principal rules for the construction of the Constitution, and speaks slightly of the two canons proposed by Mr. Jefferson.

"The judicial power of the United States shall be vested in one Supreme Court," etc. "The judicial power shall extend to all '*cases*' in law or equity," etc.

What is judicial power? It is the power pertaining to courts of justice; the power to hear and pronounce judgment in cases at law and in equity between the parties and in criminal prosecutions. "The *reasons* announced by the court to sustain its decision . . . constitute no part of the judgment."

If there is no power in the courts to annul an act because deemed unconstitutional, the same reasoning here pursued would import that mere approval of an act by the executive and its enforcement by the court in a case at bar would not conclude the question of its constitutionality. In the leading cases of judicial constructions of the powers of Congress by the Supreme Court of the United States, it happens that the acts of Congress brought in question have been upheld as constitutional. These cases have depended upon statutes expressive of measures of public policy, such as the power to incorporate a bank, and the power to declare Treasury notes a legal tender. Indeed, as constructions of the powers of Congress must mainly be invoked by acts that must stand or fall under the clause, "To make all laws which shall be

necessary and proper for carrying into execution the foregoing powers, and all other powers vested by this Constitution in the Government of the United States, or in any department or officer thereof," it will readily be seen that the acts themselves must relate to measures of public policy. The question whether a particular act is "necessary and proper, appropriate means to carry out powers enunciated in the Constitution," is not a judicial one. Formerly the power of the courts in England to decide contrary to the statute when the act itself was deemed contrary to "public policy, the first principles of morality or natural justice," was vainly but strenuously contended for by many of the judges. Said Lord Coke, in *Dr. Bonham's case*: "The common law doth control acts of Parliament, and adjudges them void when against common right and reason." But these and like indignant expressions that have in many instances fallen from the bench will be found to have been provoked, in general, by acts of such enormity as make them a just testimony to the humanity of the judges, but detract largely from their weight as authority. Nor is English history without its lesson in presenting to us a picture of the rapacity, servility, and inhumanity of the judges, who "bent the suppliant hinges of the knee, that thrift might follow fawning;" and, attempting to override the statute law of the realm, were met by the moral sense, recognition of natural justice, and traditional public policy inherent in the people, and driven from place and power in infamy and dishonor. On this branch of our discussion the true doctrine in America is well stated by Chief Justice Black, in *Sharpless vs. The Mayor*, 21 Pa. St.: "We are urged," said he, "to hold that a law, though not prohibited, is void if it violate the spirit of our Constitution, or impairs any of those rights which it is the object of free government to protect, and to declare it unconstitutional if it be wrong and unjust." We cannot do

this. It would be assuming a right to change the Constitution; to supply what we might consider its defects. . . . There is no shadow of reason to suppose that the mere abuse of power was meant to be corrected by the judiciary."

In a case in Texas (*Pierce vs. Randolph*, 12 Tex.), the eminent counsel questioned the application of the English doctrine allowing recovery of a wager on a horse-race, to horse-racing in America. I will not do him the injustice to attempt to state his argument; I prefer to quote briefly from it as reported. "I imagine," said he, "our learned judges over the Atlantic have but little conception of a quarter race-track in America. In the expressive language of Parson Brownlow, the quarter track is the shortest road to perdition that has yet been discovered. . . . Its general concomitants are an ox-cart and a barrel of whisky, out of the bung-hole of which flows one continuous stream of drunkenness and profanity. The argument that it is calculated to improve the breed of horses is only applicable to regular turf races, such as the Derby. Diogenes himself would smile at such being the result, could he but see the competitors in speed on one of our quarter race-tracks, groomed by Simon Suggs."

After stating the familiar rule allowing recovery in such case, Chief Justice Hemphill responds vigorously to the argument of counsel as follows: "But, it seems, a new rule has been discovered, by which to test the validity of contracts; and that is, the belief of the jury with regard to this tendency to immorality and breaches of the peace, and this even where such contracts have been declared by the court of the last resort to be valid in law, and to have all the force and efficacy which the law can impart to any contract. No doctrine more subversive of law and of private and public rights could have been devised. In fact, it sets them afloat upon public sentiment, to fluctuate, and rise, and fall with

the ebb and flow of popular opinion, and, when brought to trial, to succeed or fail, not according to established rules of law, but upon the belief, the private opinions, or, in other words, the whims and caprices of the jury before whom they are presented. The most sacred rights—those most cherished by the law—may be frustrated and defeated if, without any regard to the law, a justice of the peace, with his jury, might deem them against morals, good order, or public policy.

. . . It is the duty of both judges and juries to decide on rights according to the laws of the land, and not on their belief of what ought to be law. Their office is not legislative. It is judicial; it is to administer the law as they find it, and not to exalt their own belief or notions above the law, and follow these as a higher code by which the rights of the community are to be regulated or controlled."

General professional opinion has put at rest whatever diversity may have existed on this question, and now-a-days the more a judge dilates upon a subject so vague and indeterminate, and so obviously unsuited to the judicial function as *public policy*, the greater cause he gives for the just suspicion that he is merely

"Praising those things he's inclined to,
And damning those he's no mind to."

But with the enforced abandonment of this claim of jurisdiction to annul laws opposed to their ideas of public policy, first principles of morality, and natural justice, the courts of the Union, with amazing boldness and surpassing ingenuity, have sought to supply its loss by the assumption of the high powers here first noted—another form merely of the undertaking judicially to determine the public policy of the country. And as respects this chief branch of our inquiry, from out the vicissitudes of English and American political and judicial history; consistent with the terms of the Constitution and its contemporaneous exposition; and

alone consistent with the fundamental theory that the departments are equal, co-ordinate, and independent, we reach the clear light, that, upon questions of sovereign power and policy, each department must judge for itself; and over all, the people, through constitutional agencies, in the exercise of their reserved right, may declare, in such case, what is the true intent and meaning of the Constitution, either affirming or reversing the previous declarations of the legislative, executive, or judicial branches.

No question of the grant or prohibition of sovereign power or declaration of public policy should ever be considered settled until uniformity of opinion and action has been reached by the several departments, and not then until the people have made known, under circumstances and conditions favorable to its exercise, and through such time as to assure deliberation, their approval of such concurrence. And this concurrence itself, to be binding, must be reached under the free exercise of the right of independent opinion and action, and not through the influence of the gross delusion that the courts speak on the subject "with the voice as of one having authority."

If it be objected that as to governments, to quote from Blackstone's *Commentaries*, "However they began, or by what right soever they subsist, there is, and must be in all of them, a supreme, irresistible, absolute, uncontrolled authority, in which the *jura summi imperii*, or the rights of sovereignty, reside"—which is, indeed, the argument of necessity whereon the rightful exercise of this pre-eminent power by the judiciary is largely placed by its advocates—I reply to this abstract proposition, that the *jura summi imperii* in republican governments reside in the people themselves. Moreover, history affords many illustrious examples of government by conventions, as the German Empire, the Dutch Republic, the Swiss Cantons, and the Achaian League.

If it be further objected that beneficial results can only be hoped for from this process of voluntary adjustment at the end of a long period of conflict and travail, I reply, that no truly beneficial results in the world's history—physical, social, moral, or governmental—were ever achieved by “happy accidents;” and if the period of attainment of these results be deferred, it is because their right development requires it; and dissatisfaction on that account is only a renewed expression of the impatience of man with the slow processes of God and of Nature.

PAPER

READ BY

JOHN M. SHIRLEY.

The Future of Our Profession.

Our profession is one of the necessities of civilization. There is no occasion for lawyers, where the only test of human rights is the will of the strongest.

But society, even in its rudest forms, brings men into relations with each other. For the general welfare, it takes here a little and there a little from the absolute rights of individuals. The process goes on from year to year, from cycle to cycle; for the law as well as science has its cosmic forces. Common convenience and mutual necessities beget the law of custom. As wealth and population increase, these relations become more strained, artificial, and complex.

The law is the result of growth and decay: for in the law, as in everything human, there is an eternal struggle between life and death for the mastery; and therefore the great body of our law, which affects us so closely in every relation of life, cannot be administered with comparative success except through the instrumentality of a picked corps possessing the qualifications which special training and the hard discipline of experience alone can give.

Since Bracton wrote, "Destruction and Reconstruction" have done their work. A great revolution has been wrought,

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not only in the structure of the law itself, but in its processes and methods, and in the guilds by whose aid it has been administered.

Then the "law-merchant" was but a name, and the Court of Chancery another. The "custom of merchants" was not recognized by the courts as a part of the common law for nearly three hundred and fifty years; and the stout resistance of the common lawyers to its adoption, which they regarded as a usurpation, was not silenced until the final decision in 1765—one hundred and fifty-six years later. Waltham had not then invented the subpoena which made the Court of Chancery "The deformed transformed." Manufactures and the statute against monopolies were unknown, and the arts and sciences were at their lowest ebb.

The profession, as it has existed in England for centuries, divided into two great branches, was then unknown. The rigid policy of the common law was to compel all parties to appear in person, and, with the aid of the court, try their own causes. First came advocates, variously designated,—known as a standing order prior to 1255; as barristers, in a restricted sense, as early as 1291; and since, as barristers of various degrees, or as counsel. Potential as this body has been, it was the creation not of statutes, but of custom. Barristers were not admitted to practice by the courts, but were called to the bar by the Inns of Court. Probably no body of men equally potential were ever so little subject to statutory regulation.

Attorneys in fact, as contradistinguished from attorneys at law, have existed from the dawn of the common law. At a later day, in certain cases of emergency, a plaintiff or defendant, with the sanction of the court, might select some friend or deputy to take his place. The parties had the right to employ such agents to represent them in the king's courts, provided they first obtained a license from the Crown

to appear in that particular cause by such attorney, though sometimes, by "special grace," a party was allowed to select any person. This was such a source of revenue, that there were four hundred of such attorneys in the reign of Edward III.

At a later date, for the purpose of freeing litigants from this burden, Parliament provided that any person might appoint any other person his attorney without fee or license. They were still, however, nothing but agents in a particular cause. The result was that litigation was largely increased, and the parties litigant were handed over as prey to this unlicensed horde. To remedy these evils, Parliament, four hundred and eighty years ago, provided in substance that none but "good and virtuous" men, "learned, and of good fame," should be admitted and sworn as attorneys; that such should be examined by the justices, and their names put upon the roll; that in case of the death of any attorney so enrolled, the justices were in like manner to "make another in his place;" and that "if any such attorney be found in any default of record or otherwise, he shall forswear the court, and never after be received to make any suit in the court of the king."

The substance of this statute was borrowed from the French and the Roman law. Its vital principle is the bed-rock upon which all subsequent legislation in Great Britain and the United States rests. By this, attorneys for the first time ceased to be attorneys in fact, and became attorneys of record—officers of court, subject to its control and supervision. In 1871 they numbered 13,824 in the United Kingdom alone.

The essential differences between the two branches of the profession were:

The employment of attorneys was pecuniary, that of barristers, honorary. Attorneys, like other employes, might

demand and receive compensation; barristers could not demand anything, but might receive gifts. Attorneys might recover their compensation *in assumpsit* or debt; barristers had no remedy at law or in equity. Attorneys were liable for neglect of ordinary care and diligence; barristers were liable only in case of *mala fides*, and not always for that. The attorney might confer directly with his client; the barrister might not. The attorney took charge of the preliminary proceedings, made his brief of the law and the facts, with notes of the testimony, selected his leader, and acted as a go-between between client and counsel; the barrister prepared the pleadings, and took the charge and responsibility of the cause in court.

The English bar did not, as has been said, reappear with the colonists on these shores. The Dutchmen of New York and the people of the Jerseys, prior to their annexation to New England in 1688,—and, in fact, until 1708,—had little occasion for lawyers; Penn and his Quakers, still less; Roger Williams and his followers had none at all. The Separatists of Plymouth Colony sent home the only person from the Inns of Court who attempted to practise within its limits. Some of the most eminent members of the colony of Massachusetts Bay had been thoroughly trained in the Inns of Court. They did not, however, attempt to practise, but utilized their knowledge for the benefit of the Bible commonwealths. They too sent home the only educated lawyer in their midst, and the result was that the ancient English practice was from necessity revived. The parties were required to appear in court and try their own causes. They might ask a friend to assist them, and often did. "Patrons" came in in their aid, as was the case under the Roman law. Nearly every man who could read and write, and many who could not, as in the mother country, when licenses were swept away by statute, set up as an attorney in fact.

"Chimney-corner law" reigned, except where the mandates of the general court or some other court governed.

At the trials for witchcraft at Salem in 1692, an old man, Giles Corey, "standing mute," was pressed to death. Then, and not unfrequently both before and after, the minister took his seat by the side of the judge, and took his turn in haranguing and hounding the jury into returning a verdict contrary to their consciences and against their judgment. In these famous trials no lawyer participated either as attorney, counselor, or judge. Had there been an educated bar, the result might, and probably would, have been different, and the old commonwealth might have been spared the sackcloth and ashes which she has so often worn because of the memory of those trials.

But as time wore on and the anglicization of the colonies became more complete, the attorneys and barristers of the English bar appeared distinctively in New York, New Jersey, Pennsylvania, Massachusetts, and some of the other colonies; but as there were no inns of court from which the barrister could hail, they were admitted to the bar, like attorneys, by the court. "Barristers' habits" were taken in Massachusetts as early as 1760; but in some of the colonies, as in New Hampshire, no distinction between the two great branches of the profession was ever known, though Judge Story, whose notions were peculiar and who was inclined to exalt the functions of the court, in the Circuit Court of the United States for New Hampshire, conferred the degree of serjeant-at-law upon Jere Mason and Judge Smith, and that of barrister-at-law upon Daniel Webster and others. (Dartmouth College Causes, pp. 151, 152.) The distinction was kept up, however, in New York, New Jersey, and several other states, until late in the present century. It was perpetuated in the federal courts by a rule established by the Supreme Court of the United States in 1790, and which prevailed till

1858. There is now no distinction in this country; every attorney is a counselor, and every counselor an attorney. There are lawyers who make patent cases a specialty, but they are comparatively few, and confined to the larger cities. The same is true to a more limited degree in admiralty, and in business at the departments, and the like; but, in general, every lawyer in the country is liable to be called upon at any moment to frame a "Holmes' note," a justice writ, a bill in chancery; to solve some intricate problem in conveyancing, to prepare a cause for trial by jury, to sum it up, or to argue questions of law before the highest judicial tribunal in the land.

The legal profession in the United States has always been weaker numerically than either of the other so-called "learned professions," but in general has always been regarded as more potent, for it has lifted with the longest lever the material interests and passions of men.

A few brief summaries may show the position of each with reference to the others and to the population of the whole country.

In 1850 we had 23,939 lawyers, 26,842 clergymen, 40,564 doctors; in 1860, 33,183 lawyers, 37,524 clergymen, 54,583 doctors; in 1870, 40,736 lawyers, 43,874 clergymen, 62,383 doctors; in 1880, 64,137 lawyers, 64,698 clergymen, 85,671 doctors. In 1850 there was one lawyer to 964 people, one clergyman to 864, and one doctor to 569; in 1860, one lawyer to 947 people, one clergyman to 837, and one doctor to 566; in 1870, one lawyer to 949 people, one clergyman to 879, and one doctor to 618; in 1880, one lawyer to 782 people, one clergyman to 775, and one doctor to 585. The number of lawyers in the United States prior to the adoption of the Federal Constitution cannot be determined with exactness. It may be done, however, approximately.

It is known that for a long series of years New Hampshire

had more lawyers in proportion to her inhabitants than any other province, colony, or state. In 1767 she had one lawyer to 6,600 people; in 1783, one to about 5,000; in 1787, one to 4,600; in 1800, one to 2,300; in 1810, one to 1,800; in 1820, one to 1,200; and in 1830, one to 1,100.

The number of lawyers in the states at the close of the Revolution has been variously estimated at from 300 to 700. Only 136 attorneys had been admitted in New York by royal license prior to the Revolution, and many of these were dead when hostilities broke out. In 1880 the three professions numbered 214,506. There were 75 female and 64,062 male lawyers, 165 female and 64,533 male clergymen, and 2,432 female and 83,239 male doctors. 64 of the 75 female lawyers were under sixty years of age, and 11 were sixty years of age and upwards; 60,177 of the male lawyers were under sixty years of age, and 3,885 were sixty years of age and upwards; 140 of the female clergymen were from sixteen to sixty years of age, and 25 were sixty years of age and upwards; 55,639 of the male clergymen were between sixteen and sixty years of age, and 8,894 were sixty years of age and upwards; 2,268 of the female doctors were between sixteen and sixty years of age, and 164 were sixty years of age and upwards; 75,006 male doctors were between sixteen and sixty years of age, and 8,233 were sixty years of age and upwards. Of all the professions, 193,294 were under sixty years of age, and 21,212 were above that age, of which only 200 were females; 60,342 lawyers were native born, and 3,795 foreign born; 51,967 clergymen were native born, and 12,731 foreign born; 77,092 doctors were native born, and 8,579 foreign born. Of the three professions, 189,401 were native, and 25,105 were foreign born; 1,008 lawyers, 2,516 clergymen and 1,021 doctors were from Ireland; 791 lawyers, 4,301 clergymen, and 2,640 doctors were from Germany; 948 lawyers, 2,589 clergymen, and 1,748 doctors were from Great Britain; 89 lawyers, 598

clergymen, and 176 doctors were from Scandinavia; 559 lawyers, 930 clergymen, and 1,520 doctors were from British America; 400 lawyers, 1,797 clergymen, and 1,474 doctors were from "other countries."

It will be readily seen that less than one-sixteenth of the lawyers, about one-fifth of the clergymen, and about one-ninth of the doctors were foreign born.

Our population in a century has gone up approximately from 3,000,000 to 54,000,000. A century ago the legal profession numbered a few hundreds; to-day we muster 70,000 strong. The rate of increase in the population must diminish as we approach the period when our vast domain is substantially taken up by actual settlers, but there is no discernible reason why at the end of another half century we should not have more than 200,000,000 population and upwards of 200,000 lawyers.

With the light of the past to aid us, let us turn to the future of this great, growing, and powerful profession. Its prime duties are two-fold: on the one hand to "hold the fort" of constitutional liberty; and on the other to adapt the machinery for the administration of justice to the reasonable requirements of the age in which they live.

No lawyer can do his part in this great work and have "proper directing influence with his brethren," to use the language of Chancellor Kent, without natural and acquired power. He must have integrity, fair ability, great industry, and special training. A lawyer needs first of all, moral honesty and moral courage. People in other occupations often "succeed," as the world phrases it, without these. It requires but little legal reason or moral sense to pick locks, break vaults, or to bully weak men and timid women out of their rights, and oftentimes but little more to rob the living and plunder the dead. But a lawyer must be honest first with himself, because without that he cannot be honest with

others. Many a difficult cause has been determined by the moral weight of counsel.

What system of special training is the best? Here the house is divided against itself. One side insists that it must be had in a law school, and the other that it must be had in a law office. Neither is right. Schools and offices can only supplement, they cannot supersede the work of the Almighty. "Books," said the man of continental mind, "make drill-masters, but God makes generals." "Eating terms," as the benchers of the Inns found out long before the adoption of the rules of 1853, does not make lawyers. No more does one become such by lounging about some office for three or more years. The thing, and not the name, is the test. There is no place for acquiring a mastery of general principles with apt illustrations like a thoroughly equipped law school. There is no place where a knowledge of men and things and the use of the machinery of the law can be so thoroughly mastered as in a law office, actively engaged in general practice. There every student ranks up according to the test. In a few months after his admission he is taught that there is something for him to do. Each in turn becomes book-keeper, cashier, and acts in a general administrative capacity. In turn he must hunt records, look up testimony, prepare the smaller causes, marshal his authorities, and argue his cases. It teaches him what responsibility is. It gives him confidence; for he knows that whenever an emergency requires, he can have the support of the junior partner, and whenever unexpected difficulties thicken, he can bring to his aid the whole force of the office, with the trained regular at its head.

The great obstacles in the way of the profession are, first, the condition of our statutes; second, of our case law; third, the rampant tendency to judicial legislation; and fourth, the commercial spirit which has entered the profession and

threatens to reduce it from a guild to a mere trade for the getting of money.

The deterioration of the statute law, both in state and nation, has been going on for years, and steadily grows worse. The decent legislation is largely about trivial matters, which should either be regulated by the municipalities whose interests are affected, or by general legislation. The dishonest legislation is largely purchased and is mainly the work of skilled specialists, doing one thing under the guise of doing another and entirely different thing. This cannot well be bettered until the moral sentiment of the community is educated up to a higher standard, so that they will refuse to elect, or disown if elected, marketable legislators; nor until the task of framing those laws, which are to affect the entire community, can be committed to honest and intelligent men, trained for that purpose, and paid by the public for their services.

In my own state, neither the profession nor the courts would know where they were if the modern statutes were not based upon old foundations. For generations prior to the Revolution, our public statutes were framed by the king's attorney general or his assistants. These men were either trained in the Inns of Court or were otherwise thoroughly equipped lawyers. One man held the office of attorney general for thirty-six years. For many years after the Revolution, in general the same men, or those who had been trained under them, did the same work. As late as 1822 the entire probate law of the state was recast by two eminent judges of probate. The chairman of this committee, Charles H. Atherton, was one of the foremost men of the country, and had been judge of probate for thirty years. As late as 1832 the Judiciary Act, and in particular that on which the entire equity jurisdiction rests, was framed by Judge Parker, afterwards chief justice, and long

professor at Harvard Law School. The character of modern statutes is often made the excuse for flagrant judicial legislation.

Confusion worse confounded reigns in case law. For this there are several reasons :

1. We have a multiplicity of legal tribunals.

From the great extent of our territory and the unprecedented increase of our population, these must necessarily and rapidly increase. We have now thirty-eight states, and are soon to have more. These all have complete judicial systems. Each state, besides special tribunals, which are in effect courts of claims, or special courts of last resort, has at least a system of magistrates' courts, a system of courts of first instance, and at least one court of last resort. The pressure of business is such that some of these states have been compelled to resort to commissions—extra courts of final jurisdiction. In one instance, separate tribunals have been created for civil and criminal causes, and that of California has been invested with a triplicate action, by which it sits first in two sections and then as a whole. Several other states have an intermediate tribunal, which is a court of final jurisdiction in a very large class of causes. We have eight organized territories and one unorganized territory attached for judicial purposes to an organized territory. All these have at least magistrates' courts, the courts of first instance, the supreme law court, and over all the Supreme Court of the United States. The District of Columbia has all these and something more. In the federal system proper, besides the special commissions, the department tribunals, and the court of claims, we have about sixty district courts, nine circuit courts, and over all the Federal Supreme Court.

All these tribunals are a large portion of the time in a state of constant activity. Their very number necessarily

destroys the unity of the law. Sluiced through hundreds of mouths, it becomes contradictory and chaotic. If there were to be no changes, we might endure the present condition of things. The trouble is, the work has only fairly begun.

2. As a rule, the dockets of the court sitting *in banc* are so over-crowded that the work cannot be done as it ought to be.

Illustrations are hardly needed, and yet a few may be pertinent. A few years ago the highest court of one of the foremost states of the old thirteen sat in a most important division. Four hundred and fifty causes stood in the paper for argument. The court consisted of five judges. They sat for seven weeks, and disposed of four hundred and twenty-five of these causes. Assuming that the court sat every week-day for arguments; that the judges did not work on Sunday; that every judge participated in the decision of every cause, and wrote his share of the opinions (which would all seem to be violent presumptions), more than ten causes were heard and decided, and each judge wrote two opinions every day of the term. In fact, the Chief Justice wrote one hundred and sixty-two opinions, or at the rate of about four a-day. What time could have been given intelligently to the arguments or to an examination of authorities? It is said that the Court of Appeals of the State of New York decide about five hundred causes annually, and once or twice have decided about seven hundred; and yet the state has twice been compelled, by constitutional amendments, to relieve this overburdened court by commissions of appeal. It is notorious that these enormous labors broke the backs of four strong men on the bench, of which Judge Church was the head. It is said that the Supreme Court of Illinois, before it was relieved by the appellate courts, decided about seven hundred causes one

year, and nearly nine hundred another. It is one of the mysteries to the profession why the rest of the court did not die with Judge Breese, or resign with Judge McAllister.

Two lamentable results flowed from this state of things. Judges not unfrequently forgot that their prime mission is to administer justice, and that every suitor has the right to have his cause fairly and fully heard. They came to regard themselves as a species of telegraph operators, whose prime mission is the dispatch of business. They guillotined one party or the other, in order to diminish the docket by laying some new head on the block.

The assignment of opinions is practically the decision of causes by a single judge, as a rule. Other things being equal, three judges are better than five, and five better than seven. The additional numbers only retard in consultation. Their utility consists mainly in the fact that they form an additional clerical force, who can examine more causes, hunt up authorities, and write more opinions. A more thorough examination of a cause can undoubtedly be made by one man than by three, five, or seven; but he is far more liable to err, because he is liable to be influenced by his biases, his prejudices, or his peculiar views. He has not the opportunity to correct his judgment by the intelligent judgment of other men who have examined the questions as carefully as himself, and from another stand-point. Where causes are thus assigned, in eight cases out of ten the assent of the others is merely formal. The instances are very many in which shipwreck has thus been made of the law. The Supreme Court of Pennsylvania has long been one of the ablest judicial tribunals in the Union, and her judges noted for their frankness. In *Schrivver vs. Meyer*, *Weidman vs. Maish*, *Hutchinson vs. M'Clure*, and *M'Konkey's Appeal*, we have marked illustrations of the evil referred to. Doctrines which had been settled from the foundations of the state, and long lines of

decisions where the doctrine of *stare decisis* should prevail, if anywhere, had been overturned and trampled under foot, if we can give credit to judges Black, Gibson, and other eminent jurists, because "the pressure of business left little time for consideration," and the judges "were compelled to go at railroad speed," and to depend upon the judge who prepared the opinion "unseen by the rest of the court before it was delivered." There is hardly a state in this Union in which the same thing has not been repeated in one way or another.

No one will be likely to question the careful conservatism or great ability of Chief Justice Shaw, or that of the eminent judges who were his associates. *Elliott vs. Stone*, 12 Cushing, 174, was decided at the October term, 1853, Chief Justice Shaw delivering the opinion. It was a landlord and tenant case. The same case between the same parties was decided at the October term, 1854. This opinion was also delivered by the Chief Justice. The facts in both cases are precisely the same, with a single exception, and that is expressly stated in the last opinion to be immaterial. The two decisions are directly in the teeth of each other. The last opinion contains no reference whatever to the former one, and it is evident that the court had entirely forgotten both the former case and the opinion.

Not to be outdone by his brethren in Pennsylvania and Massachusetts, Mr. Justice Bell, a judge of great learning and ability, in *Hazeltine vs. Colburn*, 31 N. H. 466, another landlord and tenant case, decided the same point both ways in the same opinion, to the great bewilderment of succeeding judges.

Sometimes a judge who prepares a minority opinion forgets that it was not the majority opinion, and forthwith it goes down in the reports as evidence of the law of the land.

A new practice has grown up among judges during the last thirty years which is very pernicious. A judge of ample means goes upon the bench. He is, or becomes, a favorite of society. As such, demands are made which encroach seriously upon his time. Having the means, he employs another lawyer, nominally as his clerk, to transform his notes into opinions, and reinforce them with arguments and authorities. Sometimes these short notes are simply judgment for the plaintiff or defendant, and the luckless deputy judge finds himself at his wits' end to know whether he shall write up an opinion for the plaintiff or defendant. In *theory*, these opinions are always considered carefully afterwards by the judge who, in the language of an eminent judge, "takes the responsibility of the opinion." In other cases the same judge, and for the same reason, employs in like manner a clerk to examine the causes assigned to him, to ransack the precedents, and, as it is termed, block out opinions in the less important causes, in order that his employer may reserve his strength and leisure for those of a more important character. In this way new contributions are added to the law. For these reasons and many others, the reports are not always trustworthy evidence of what the decision was or the law is.

3. We have a multiplicity of reports, and they crowd upon us like the pests of Egypt.

A century ago there was not a single volume of reported cases published in the United States. Ninety years ago there were but two small volumes. To-day we have at least 3,100 volumes. They are increasing at the rate of about 100 volumes annually. The United States Digest for 1882 culls from 107 volumes. At this rate, with its natural acceleration, how shall we stand a century or even fifty years hence? But this is not all. Our courts constantly turn to the reports of the mother country and her dependencies. These number

about 2,400, and are rapidly increasing. The modern British reports, it is true, are in general of little account. Our transatlantic cousins have a passion for statutes. The famous Grecian explorer, in excavating the hill of Hissarlik, found seven cities, built one upon the ruins of the other. But this is nothing in comparison with the British statutes. Three entire systems of bankruptcy, with no end of amendatory acts, have been swept away, and before long another must follow in their train. Parliament to-day is engaged in siamesing together two systems of bankruptcy as opposite in principle as the poles. The foundation statutes in many cases have been amended, recast, and reconstructed again from ten to thirty times. These statutes have sometimes been piled in disjointed fragments, "Pelion upon Ossa," upon the foundations of the common law, until the task of discovering the primitive formation is about as tedious and difficult as the exhumation of Pompeii or Herculaneum. The modern decisions are therefore largely based upon the Winding Up Acts, the Employers' Act, the Local Management Act, the Bankruptcy Act of 1869, the Bankruptcy Rules of 1871, the Rules of 1875, the Common Law Procedure Act, the Land Clauses Consolidation Act, the Settled Land Act, the Fines and Recoveries Act, the Judicature Act, and a great variety of others, and therefore are neither in point nor applicable here. But every judge and every lawyer in active practice must examine these authorities now and then or he will miss some masterly judgment resting entirely upon common law or equitable principles; yet it is utterly impossible for any judge, and far more so for any lawyer in active practice, to examine with care the great bulk of English and American decisions, except as causes arise. Few things are more absurd to any good lawyer or judge than the idea that, with a mass of other work pressing upon him, he can read, much less understand, two or three volumes of reports a week.

The burdens of the lawyer engaged in miscellaneous practice are more onerous even than those of the judge. His labors in causes *in banc*, as respects matters of law, are substantially the same. Besides this, one-half of his time is taken up with conferences with clients, in the routine and administrative parts of the business, and in the extensive labors involved in the preparation and trial of causes which involve questions of fact.

4. Whenever any man, possessed of mental brawn and charged with the execution of enterprises of great "pith and moment," finds a river or mountain in his path, he bridges or turns the stream, canals the cut-off, squirrels through the cañon, flanks the mountain, or, in the last resort, tunnels it. Judges do the same thing; and this is judicial legislation. We were all taught that it was the duty of judges to declare but not to make the law. We all know this is one of the resplendent fictions, without which it seems impossible for an Englishman to administer law, government, or anything else, and which has long cheated the reason by beguiling the imagination of men.

Mr. James Fitzjames Stephen, in his *View of the Criminal Law of England*, pp. 326, 328, says: "The fact that, under the fiction of declaring the law, the judges in reality make it, has been recognized by every one who has studied the subject with candor and intelligence, since the days of Bentham, at least. . . . The English judges have always formed one of the best subordinate legislatures in the world." And his real objection is that this legislation is necessarily *ex post facto* in its character. Congress cannot make *ex post facto* laws, nor, in general, can the states make those which are *ex post facto* in the technical sense, but the court can do so. The legislation of the court rivals that of the statute factories in quantity, and not unfrequently exceeds it in importance.

Such is the condition. A remedy, partial or otherwise, must be had in the near future. What shall it be?

We are told, on the one hand, that the elasticity of the principles of the common law, and, on the other, that codification, will prove a sovereign panacea. We have had the first in effect since the existence of customary law, and the latter since decretal or statutory law existed. We shall have them till the Judgment Day. Codes may accomplish much within a single state, but they must necessarily be supplemented and modified by construction. General uniformity is as much to be desired as uniformity within a particular state. The difference on fundamental questions shows that legal reasoning, as it is termed, is grievously at fault. In certain states the prosecution, where it is alleged that the accused was insane, must satisfy the jury, beyond a reasonable doubt, that he was sane, or he must be acquitted. In others it is held that the prosecution must satisfy the jury by a balance of probabilities; and in others yet, that insanity is an affirmative defense, which must be made out by the prisoner. In one portion of the Union the contract embodied in a Holmes' note is valid against creditors, but the Supreme Court of the United States has held it to be utterly worthless, and in New York the Court of Appeals has settled that it is both valid and invalid. In Massachusetts, an instrument which in other respects is a promissory note, but which recites that it is payable on or before a certain day, therein named, is not a negotiable note; but in Michigan and several other states it is otherwise. A stipulation for the payment of attorney's fees is often appended to what would otherwise be a note of hand. Several states hold that the stipulation is valid and destroys the negotiable character of the instrument; others, that the stipulation is valid and the note negotiable; others yet, that the stipulation is void, and therefore the note is nego-

liable. Unfortunately for signers, notes payable with interest sometimes mature. The courts of fourteen of the states hold that the contract rate of interest governs after maturity, while the courts of ten states hold that the statutory rate governs, and the Supreme Court of the United States is in general accord with this view.

An eminent member of the federal judiciary has recently informed us that Lord Holt, in enlarging the common law, "established the negotiability of bills of exchange and notes." Other eminent jurists have told us that the latter is due entirely to the statute of the 3d and 4th of Anne, which practically took effect May 1, 1705. Others yet, that this effect had been given them by a little coterie of goldsmiths in London, during the twenty or thirty years' controversy with Lord Holt, prior to this act. Lord Holt was born on December 30, 1642. He became Chief Justice of the King's Bench in April, 1689, and died in March, 1709. Queen Anne was born February 6, 1664, and ascended the throne in 1702.

On August 16, 1631, the General Court of Massachusetts Bay enacted "That any bill assigned to another shall be good debt to the party to whom it is assigned." This brief but comprehensive statute was expanded by the same body in 1647, so as to provide "that any debt or debts due upon bill *or other specially* assigned to another, shall be as good a debt and estate to the assignee as it was to the assignor, at the time of its assignation; and that it shall be lawful for the said assignee to sue for and recover the said debt due upon bill, and so assigned, as fully as the original creditor might have done; provided the said assignment be made upon the back side of the bill or specialty."

This statute was subsequently amended in some particulars. Either by express enactment or by virtue of the law of custom, this principle became a part of the law of

Plymouth, and of the other colonies which were largely the result of the outflow from the Bay Colony, and of those which were from time to time annexed to that colony.

Many a gifted student has been sorely puzzled in attempting to find out how Lord Holt did this, by stoutly deciding that it could not be done, or how the goldsmiths could have done this before such notes existed, or how we are indebted to Lord Holt or Queen Anne for a state of things which existed on these shores before either of them were born.

In *People ex. Baker*, 76 New York, 78, the Court of Appeals smote with heavy hands one of the corner-stones of society, by holding, in effect, that there could be a husband without a wife; or, to be more specific, that a man could be convicted of bigamy for marrying a second wife while the first wife had, *quoad* herself, been lawfully divorced by a court of competent jurisdiction, and rightfully remarried.

On no subject is uniformity more desirable than in the matter of insurance; and yet between underwriters and courts it became, years ago, "The Great Dismal Swamp" of the law of contracts.

Relief can only be had from legislative hands, and it may be found quite as necessary to codify underwriters and judges as the law.

The law of common employment may be tersely but roughly summarized as follows:

In England, the master is not liable for the negligence of a co-employé, because the contract so provides; but here, in general, it is so because the contract does not provide that the employer shall be liable; and yet, in terms, these contracts are precisely the same.

First, the rule that the corporate master could only act under the common seal was discarded; then we were told

that the master was only liable because of the fiat of the directors; then that the rule should not be extended; then that the master was liable under the doctrine of *alter ego*; and then that the latter doctrine must be applied in all cases where it was the duty of the master to be present.

It must be a bold man who would undertake to tell where the doctrine of common employment ends, and that of the master's duty to be present begins, in any state in the Union.

Much of this trouble has arisen from the fact that judges have often failed to perceive that the rule first laid down here in Farwell's case, was established by a great and wise legislator as a species of protective tariff for the encouragement of infant railway industries.

It was a harsh, but a plain and simple, rule. Pressed by considerations of humanity and public policy, the courts began, step by step, to relax the rule, and chaos reigns.

Upon a kindred point the cases are nearly as diverse.

Where a conductor kissed a lady passenger without her consent, C. J. Ryan (17 Am. Rep. 504) held that it was the duty of the master to be present—and the corporation smarted in damages.

Another great court, in a memorable case, held, in effect, that the master owed a passenger the duty to protect him neither from wanton insult nor pillage.

As judges sometimes say, the line had to be drawn somewhere, and at the last advices they seem to have drawn it at kissing.

A great body of constitutional law—in the American, not in the English sense—has grown up in this country. It must necessarily increase more rapidly in the future than in the past. It is quite as contradictory as any other. In New Hampshire, a man may constitutionally be made guilty of a crime if, on his own premises, in a peaceable and orderly

manner, he sells milk or pies within two miles of an incorporated camp-meeting. In Kentucky, the law is precisely the reverse, and yet nobody has been able to discover any difference in the constitutions of the two states. The New Hampshire judges have not yet told us why, if the principle is sound, it may not cover the whole state; nor whether a man can, in like manner, be treated as a criminal if he raises the cows which produce the milk, or plants the trees and sows the grain whose fruits enter into the pies.

But we grow weary as we contemplate the long list that might be enumerated.

What we need is a Frenchification, so to speak, of the Angliæan law as to civil causes. In the days of the Roman and feudal law the English and French systems drew from the same root. The two soon after began to diverge, but in latter years they have been drawing closer together. The Judicature Acts are primarily French, with English veneering. The difference between the two are partly arbitrary and partly the result of race and training. The English blood moves slowly, the French quickly; the English lawyer looks backward, the French lawyer forward; the first impulse of the Englishman is to look for precedents, and that of the Frenchman for principles; the Englishman looks back to see what has been done, and the Frenchman to ascertain what ought to have been done; the former gives more liberty and license, and the latter—political considerations aside—speedier and greater justice; the French system discards juries, the English retains the traditionary habit, but trends Frenchward.

Trial by jury in criminal causes has been the bulwark of English liberty, but not for the reasons usually assigned. Drawn from the people, as a rule, it has stood between them and arbitrary power. It has done this not because the juries

were learned or wise, or because there was some magic charm in the number twelve.

The mother country has always had two parties,—the Crown or some favorite heading one, and somebody else, another. The leaders of each in turn sought to rob or murder the leaders of the other. The machinery of justice was the handiest for this purpose. Whenever the juries were fairly drawn they would represent both parties; and, in general, men would not convict men of their own party for political opinions and conduct. In a vast majority of civil causes, as every sensible lawyer knows, the common jury has simply been an automaton of the court, finding as the presiding judges directed.

A brief constitutional amendment on a single point will enable us to adapt our judicial machinery to our needs. An outline of the procedure may be:

1. In any case, legal or equitable, a rule upon the defendant issuing, as of course, in the form of a brief summons to show cause why judgment should not be rendered against him, followed by a copy of the verified statement of the plaintiff's claim filed in court.

2. In case of non-appearance, judgment for the plaintiff on the verified claim, unless, for special reasons, a judge orders a hearing in damages, as on default.

3. Upon an appearance, an answer setting up in detail the verified statement of the claim, legal or equitable, of the defendant by way of defense, set-off, or counter-claim.

4. Trial and report by a single judge, or, in an exceptional case, by three.

5. Revision on this report by the court of last resort of those questions of law upon whose decision the case necessarily depends.

6. The trial court to open the windows and let in the light by the admission of all testimony now deemed competent,

and, in addition, any other which would throw any light upon the issues.

The English rules of evidence were largely artificial, and based upon the religious doctrine of the total depravity of man. Until the reign of Bloody Mary, no person charged with crime had the right to show by testimony that he was innocent, and it is but little more than half a century since he had the right to counsel. It is only a few years since, in many jurisdictions, the accused has been allowed to testify in his own behalf. No party to the record or person in interest could be allowed to testify. These and other rules have disappeared. We cannot go back or remain stationary. There is but one thing left for us to do, and that is to go ahead.

The only real objection arises from a new order which has sprung up in this country, and which may be termed the highwaymen of speculative finance. When capital discards its conservative character, and takes on that of a predatory brigand, in the end it will be treated like all other brigands. It often hides itself under the guise of an artificial person. It seeks to control, as far as possible, the Treasury, and regards as legitimate the purchase of legislative bodies, and, as the Wisconsin phrase is, the propitiation of "the feelings" of judges. It is said that judges may not deal justly between such and the people. Let their lot, then, be cast with the criminal classes. Give them the ancient trial by jury, restore wager by battle, do what you please; but this is no reason why nine out of ten litigants should be deprived of what they need.

My native state is small, and limited in population and resources in comparison with the great commonwealths represented here; but I trust that I may be pardoned for summarizing the history of the experiments we have been trying

for the past thirty years, for the reason that trial by jury in civil causes, for more than two hundred years, has represented more to her people than it could possibly to any other, while to-day it represents far less, and is but little more than a memory. Unlike other New England commonwealths, it was settled by business men and the daring and adventurous spirits who, by some irresistible law, are impelled to seek an exposed outpost on the frontiers. For more than a century every title deed was written in the blood of some member of the household. In 1680 royal power made it a province, against the will of the people, for the purpose of enabling the royal favorites to rob the colonists of all they had—their lands. To sweeten the bitter draught, the colonists were temporarily allowed to hold the leading offices and play at legislation. The township system—pure and undefiled in fact, if not in form—had existed from an early period.

The first legislature framed a code with the all-important provision that the jurors should be selected in open town meeting. Two years later this was overturned by the Crown, and the British jury-packing system substituted for it. This left the colonists in a state of chronic rebellion, though they generally kept within the forms of law, until seventy-two years later, when they forced the Crown to restore that great right. The result was that the jury-box became the most thoroughly representative body that ever existed. Through the township machinery the ablest men took their places in the jury-box. The place of a jurymen was a post of honor, and especially in the higher court: that of a foreman of still greater consequence, and he was often a better soldier, an abler business man, a wiser legislator, and a better judge than any of the Crown judges who occupied the bench in ante-revolutionary days. The same general state of things continued long after the Revolution. The jury in this way

became practically, in a large majority of cases, the supreme court both of law and equity.

After 1802, under Chief Justice Smith (a jurist of the Kent stamp), the law began to assume a more scientific character, and this infringed on the powers before exercised by the jury. But there was no noticeable depreciation of the old standard in the jury-box until after 1830. From that time it sank slowly, though but little in the mountain counties until after 1854, when the Know-Nothing crusade carried a flood of driftwood into jury-boxes never seen there before. Since then clear-headed, energetic men, who are fit for jurors, have, as a rule, kept out or got out of the jury-box. For the next twenty years the tendency was downward, although professional jurors were unknown. Verdicts were set aside on grounds which never touched the marrow of the case, and new trials for misdirection were frequent. Litigation had become more complicated. The trials had been steadily growing longer, and the expenses greater. In one of his charges in 1807, Judge Smith stated that an adjournment during the trial of a cause had been unknown until a short time previous. In one of the last causes in which Franklin Pierce led for the defendant, in 1852, before he became President, the trial lasted forty-eight days, more than two hundred witnesses were in attendance, and the judgment was for less than \$40. The result of this condition of things was the legislation to which I am about to refer. In 1855 the statute provided that where the parties agreed in writing, the judge instead of the jury might try the cause and make report of his findings. For years this was little heeded, but it gradually grew more and more in favor. The dockets were still crowded. The statute of 1874 provided that every judge, unless it was shown to be inexpedient, might send any case to a referee, whose report was made *prima facie* evidence before the jury—the county paying a reasonable compensation for the tribunal. These referees were nominally

selected by the court, but in reality by the opposing counsel. They were generally judges, ex-judges, or lawyers of recognized standing. As a rule, there was one referee, but in exceptional cases the parties were allowed three. The result was that jury trials practically ceased, and every village became a special county seat. Few men were bold enough to try a cause before a jury against the weight of a referee's report. At last a divided court cut out the heart of the act by holding the *prima facie* clause unconstitutional.

By the statute of 1876, referees were made final judges of the facts, where the parties waived the right to a jury trial, and the final judges in all other causes sent to them. In 1876, for the purpose of furthering this policy, a constitutional convention deliberately took away the right of trial by jury, except where the title to real estate was involved, and the "value in controversy" was less than a certain sum. This was ratified by the people in March, 1877, and took effect August 1, 1877. The legislature promptly adapted the statute to the change in the constitution.

The result of this and the amendatory legislation was that all equity and divorce causes, and other proceedings, and all causes covered by the constitutional amendment, are tried by a referee or a single judge, and his finding of the facts is final. The Supreme Court, in *Sargent vs. Putnam*, 58 N. H. 182, in a most elaborate opinion, held that "an action at law may be committed, without the consent of the parties, to one or more referees for the settlement of accounts too complicated to be intelligently investigated and adjusted in a jury trial." In this case the trial-judge ordered the cause to be referred to three referees, and that their report when made should be final. The significance of the decision is not in the fact that it denies the right of trial by jury in matters of long accounts. This, for historical reasons ante-dating her constitution, was so in New York and

other states. These reasons never existed in New Hampshire. The decision is, therefore, authority for the proposition that the Constitution gave no party the right to a trial by jury where that would in fact have been impracticable. This decision has been repeatedly affirmed and, as many think, extended. In *Wooster vs. Plymouth*, a highway town case, the court followed the decision in *Dunmore's Appeal*, 52 Pa. St. 374, and held that neither party in a suit against a municipal corporation had a right, under the Constitution, to trial by jury. These decisions narrowed the pre-existing practice in a marked degree. Besides this, by agreement of the parties or counsel, a large share of the causes, where the parties are still entitled to a jury trial, are tried in the same way. These trials, as a rule, are had within ear-shot of the parties and their witnesses. They are speedy. A single judge is much more liberal in the admission of testimony than if the trial were by jury. They are less expensive. Many causes are tried at the entry term, which is practically open for trials, at the convenience of court and counsel, until a short time before the next term. The causes not disposed of at the entry term go upon the continued docket. In the opinion of one of the judges, who has given special attention to the matter, fully two-thirds of the entire calendar has been taken from the jury by the constitutional amendment. In the year 1882-83, there were but seventy-five jury trials in the entire state. In my own, the central county, we have not averaged more than four or five jury trials a year for several years. The amount paid referees in 1879 was \$15,674.40; in 1880, \$16,711.57; in 1881, \$17,491.19; and in 1882, \$11,505.78. The salaries of the judges were increased in 1881; since then they have done a large share of the work formerly done by referees, and the amount paid the latter has necessarily been diminished.

Physical causes, as suggested by Mr. Potter, undoubtedly had their effect both upon the people and the profession. Manufactures have utilized every stream, and railroads have gridironed the state. The people, and lawyers in particular, come and go at tick of wire or touch of bell. This has changed the old-time social character of the profession, as well as its methods. Oratory has passed away. Thorough preparation, and a statement, bristling with points like an auditor's report, has taken its place. What has been true with us may, from like causes, become so throughout the Union.

PAPER

READ BY

SIMEON E. BALDWIN.

Preliminary Examinations in Criminal Proceedings.

There are but three of our states* in which the constitution does not declare that no person accused of crime shall be compelled to give evidence against himself; and a similar guaranty was grafted into the Constitution of the United States, at the instance of the first Congress. I ask you this evening to consider the reason of this rule, and the true limits of its application.

Our fathers, in the era of our early constitution-making, were not acting the part of political theorists. They undertook to deal with practical questions in a practical way. It was their business to gather in the hard-won fruits of Revolution. They had just struck off the hold of a government which had been always hard, and often hostile—a government administered in the interest of the great and the rich; a government which was suspicious, jealous, overpowering, when it wished to overpower.

Men were still living in whose boyhood torture had been applied on British soil, to wring confessions from unwilling lips; and the common law gave no sufficient warrant against its future use, should public safety ever be deemed to demand it, by those in power.

* Georgia, Iowa, and New Jersey. South Carolina did not introduce the provision till 1868, nor Michigan until 1850.

Britton, indeed, had said* that felons must be brought into court without irons; "so that they may not be deprived of reason by pain, nor be constrained to answer by force, but of their own free will;" but Bracton puts this privilege as granted, so that they might not appear compelled to offer to undergo the trial by ordeal.†

Coke gravely tells us in his *Institutes*‡ that "there is no one opinion in our books or judicial records (that we have seen and remember) for the maintenance of torture or torments," and that Magna Charta forbids it; yet a few years before (1619) he had signed, as privy counselor, a warrant to put one charged with treason to the rack;§ and in his speech as attorney general (in 1600) in the prosecution of the earls of Essex and Southampton, he attributes to the queen "overmuch clemency to some" in the inquiry into the matter in hand, since, "out of her princely mercy, no man was racked, tortured, or pressed to speak anything farther than of their own accord and willing minds, for discharge of their consciences they uttered."|| So in 1613, in the Countess of Shrewsbury's case, Coke,¶ as chief justice, mentioned it as a special privilege of the peerage in legal proceedings that, "for the honor and reverence which the law gives to nobility, their bodies are not subject to torture *in causa criminis laesae majestatis*."

It took, in truth, Cromwell and the Civil War to root out torture from the English courts; nor was it given up in Scotland until the succeeding century.

The criminal code of England was a bloody and heartless one, when the Pilgrims sailed away for freer shores. Its

* Cap. v. 26.

† Bracton, lib. III. 137, "Ne visum esset" ad aliquam purgationem suscipiendam."

‡ III. 35.

§ Samuel Pearsall. Ann. Reg. for 1700; Antiq. 96.

¶ 4 State Trials, 4336.

¶ 12 Rep. 96.

severity, it is true, often prevented its execution. Juries stood ready to violate their oaths rather than send a man to the gallows for some trivial offense; and to construe the strength out of many a Draconian statute was often, in the language of the paper to which we listened with so much pleasure this morning, "the resplendent work of a humane judiciary."

But wherever the interests of the party in power were involved in a criminal proceeding, the bench had proved but a feeble barrier against political passions and prejudices. Under the guise of prosecuting crime, ministers had not seldom been seen to strike down the innocent and spare the guilty.

What might be the future of the new governments which, a hundred years ago, were being here called into life, to succeed to the rights forfeited by the British Crown, who could tell? They were to be clad with the same sovereign power. They might abuse it in the same way.

For this cause we find these solemn guaranties in our American constitutions, of the right of all accused of crime to have fair notice of the charge, defense by counsel, trial by jury, and exemption from being forced to testify against themselves.

That of defense by counsel is more nearly connected than one might think with that of immunity from enforced confession.

In Finch's *Discourse on Law*, he speaks approvingly of the then English rule of refusing counsel when the prisoner denied the fact, and gives this as his reason:

"For either his conscience, perhaps, will sting him to utter the truth, or otherwise, by his gesture, countenance, or simplicity of speech, it may be discovered: which the artificial speech of his Counsel learned, would hide and colour. Also himself can best answer to the fact."*

* Edition of 1661, p. 386.

The power of a law, I need not say to an audience like this, cannot be known or foretold when it is enacted. It will lie in the construction and operation to be given it by the courts and people.

If it appeals to some popular prejudice; if it is rooted in some traditional principle of freedom, for which a former generation may have fought with their kings, and fought successfully; if it attracts human sympathy, or reassures human fears, it may rear up around itself a wall of protection and public reverence, which will endure long after the reason of the enactment has ceased to exist. A law may grow into an institution. It may be extended by analogy, it may be expounded and expanded by some course of judicial decision, far beyond the anticipations of its framers.

So did the little phrase, "impair the obligation of contracts"—like the genius of some Arabian tale—at the touch of the magic wand of Chief Justice Marshall, rise and spread into the form of that invincible champion of chartered franchises, by which the whole theory of American corporations was to be revolutionized once and again.

And so, by means perhaps less direct, but no less controlling, has a new meaning been read into many a provision of statute or constitution, by public opinion and the lapse of time—a meaning by which the law, it may be, at last ceases to protect, and begins to oppress society.

Has not this been the history of the constitutional guaranty now under consideration?

The judges of England gave it as their opinion, in 1628, under the spur of the public sentiment that was then dictating the Petition of Right, that to compel a discovery by torture, from one accused of crime, was not allowable by the laws of the realm. All precedent, however, was against them. The practice of the reigning sovereign continued to be against them as long as he had courts to control. The

authorities which they could cite to sustain their opinion were uncertain. Britton, in the passage already quoted, was the strongest of all. Fortescue* had inveighed, with a manly outburst of feeling, against the barbarity and folly of the practice, but had not ventured to deny its legality. Jardine, in our own day, has not hesitated to defend it as an ancient flower of the prerogative.

The maxim, *Nemo tenetur accusare seipsum*, first appears in English law books† at the era of the Civil War, and certainly derives no authority from the language in which it is expressed. As Ortolan said of the theories of Roman law and legend evolved by the German historical school, it has the singular merit of having been wholly unknown to the Romans themselves.

Hardly two authors quote it in the same words, and in one leading case, *People vs. McMahon*, 15 N. Y. 387, 390, it is cited twice in the same opinion—once as *Nemo tenetur accusare seipsum*, and once as *Nemo tenetur prodere seipsum*.

Here, then, was a disputable doctrine of uncertain origin—a doctrine that great men could assert in books, and deny in practice. It was a doctrine in advance of the utterance of the judges in *Felton's case*. They only forbade torture. This went further, and forbade any form of compulsion.

In the Countess of Shrewsbury's case, already cited, while her rank and sex might save her from the rack, Coke and Bacon concurred in holding that a fine of £20,000 and imprisonment during the king's pleasure were but a just punishment for her refusal to criminate herself; and the poor lady, in fact, died in the Tower.

Our forefathers, then, approving to its full extent the principle formulated in Wingate's maxim, determined to give it a place in their constitutions. They did so. But did they mean to do more, and in effect impede, if not prevent, dis-

* Cap. xxii, folio 24.

† Wingate's *Maxims*, 1648.

closures of crime, not procured by force or threatened fine or imprisonment? For this is the result to which a hundred years of use has really brought us.

In few of our states* is the prisoner, on his arrest, even asked by the examining or committing magistrate if he desires to make a statement; and in almost every one of these the magistrate is enjoined to caution him that he need say nothing, and that whatever he does say may be used against him. Similar provisions were introduced into the English law by Sir John Jervis's Act† in 1848.

Is it not plain that such an invitation to speak is rather a counsel to keep silent?

The object of criminal prosecutions is to detect the authors of crime, and to punish them. In the majority of cases the person arrested is the person guilty. In most countries the first step is to ask him to give an account of himself with reference to the crime in question—to say where he was and what he was doing at the time of its commission; to explain, if he can, the circumstances which fasten suspicion upon him. In most countries this inquiry is conducted by a magistrate or prosecuting officer, and instituted before the prisoner has consulted counsel, or had time to frame theories of defense. The result of the examination is put in writing by the same authority, and therefore preserved in an authentic form. If the accused be innocent, he will often be able to clear himself by a frank statement; if guilty, he will probably become involved in contradictions and absurdities.

Such was the practice in England until the act of 1848. Her justices of the peace were originally more like our

* Some sort of provision to this effect is made in Delaware, Louisiana, Mississippi, Missouri, New Hampshire, New Jersey, New York, North Carolina, Tennessee, and Texas, and in these states only.

† 11 and 12 Viet. cap. xlii.

constables,—prosecuting, rather than judicial officers. From ancient times, and under the positive injunctions of an act of 1554,* they had made it a principal part of their duty to examine the prisoner, and record whatever information he gave.†

In the Countess of Shrewsbury's case, we find Lord Bacon pressing her to a disclosure, by this very consideration of ancient and reasonable practice.

"No subject," he says, in his stately fashion,‡ "was ever brought in causes of estate to trial judicial, but first he passed examination: for examination is the entrance of justice in criminal causes: it is one of the eyes of the king's politic body: there are but two—information and examination: it may not be endured that one of the lights be put out by your example."

No prisoner, indeed, can hope to be exempted from an examination, simply because the law makes no provision for requiring it. Some such questioning, under any system of jurisprudence, he is certain to undergo. It may come from neighbors, from busybodies, from reporters, from constables, detectives, jailers. It will come from them if it does not come from authority of law. And the answers obtained, lying simply in human memory, will be easily twisted and perverted by the narrator, anxious, perhaps, to magnify the importance of the revelation his sagacity has secured, or perhaps to screen a friend or serve a grudge.

It is, in fact, the evils and inaccuracies of testimony, founded on these extra-judicial confessions, which have led English and American courts to confine its introduction within such narrow bounds.

* 2 and 3 P. & M. c. x.

† 1 Stevens' *Hist. Crim. Law of England*, 219, 221.

‡ 2 State Trials, 770, 778.

But for the very reason that those in authority have no right to require a disclosure, those without authority feel justified in seeking to worm it out by threats, by fraud, by holding out false hopes, by putting forward false pretenses. On information thus obtained rests a large part of the convictions for crime in any of our courts. The source of the information may not appear at the trial. Unguarded answers may have put the inquirer on the track of more certain evidences of guilt, and an explicit confession, however obtained, if once made, is likely to result in a plea of guilty.

In many cases, then—in most, I believe—the conviction of the prisoner, in this country as well as under the continental mode of procedure, results from words spoken by himself. But what European courts accomplish by direct means, we attain by indirection.

Unwilling to allow a magistrate to institute, as a matter of course, a formal examination, and place the result on record, we leave the same information to be fished for by the sheriff who makes the arrest, by the jailer, by a fellow-prisoner turned informer, or by the detective in disguise, and only require the witness who proves it to add perhaps perjury to fraud, in swearing that no undue means were used to elicit the confession.

The tendency of modern legislation has, we all know, been strongly in favor of admitting parties in interest as competent witnesses.

The common law excluded them because it believed that they were likely to lie, and certain to be tempted to lie.

But, for a generation past, England, and, for the most part, America, have received their testimony in civil actions for what it is worth, and have found the cause of justice advanced by it.

In criminal proceedings, the temptation to perjury, if the accused is allowed to testify for himself, is undoubtedly

greater—rising with the degree of the crime charged; and yet he is to-day a competent witness in most of our states, and has been since 1878 in all courts of the United States.

It is a general feature of these recent laws—admitting the accused to the witness-stand—that his failure to testify shall not create any presumption against him. I cannot but think that this proviso is only another proof that the spirit of the constitutional guaranty in his favor has been misconceived in its administration.

Were it not for that guaranty, who would say that if a man has the right to speak in his own behalf, to explain all the circumstances brought up against him, and declines to avail himself of it, it ought not to be deemed an indication that he cannot explain them? In the forum of common sense it is such an indication. If our boy, our servant, our clerk, is charged with some fault, and denies it, we expect him to make a frank statement of what he did or knew. If he does not, we consider the charge half proved. Should we be more tender of the prisoner in the dock? Give him, if you please, the right to testify for himself; but, if you give it, do not disturb the balance of justice by forbidding the jury to suspect him, if he keeps silent.

Such has been the view of some,* but not of most courts, in administering justice in such cases, under statutes not containing a positive prohibition against comment on the position of the accused if he declines to testify. The general current of decision has been towards making his constitutional privilege as wide as the words will bear.

This course of construction has led to many rulings in favor of the defense, which I cannot but think strained and unnecessary.

Thus, in a recent case in this state,† it was held that the

* *State vs. Bartlett*, 55 Maine, 215-221.

† *People vs. McCoy*, 45 How. Pr. 216.

person of a woman charged with killing her infant child, could not, without her own consent, be examined by physicians deputed by the coroner, to ascertain if she had recently been a mother. The same principle would seem to preclude searching the pockets of a suspected thief, or stripping a man arrested for murder, to see if his body shows marks of blood or violence.

In a later case in Georgia,* indeed, the court rejected evidence that the defendant's foot fitted exactly the tracks left on the ground by the perpetrator of a crime, because, to obtain the proof, his foot was placed by force in the necessary position.

A different, and as it seems to me, sounder conclusion has been reached in some other of our states, in admitting testimony of a similar character.†

The leading authorities, however, are in accord in holding that the prisoner who accepts the benefits of a statute making him a competent witness, accepts them to the extent of becoming open to the same cross-examination to which any other witness may be subject, and in respect to whatever can legitimately throw light on the question of his guilt, whether or not it be connected immediately with his direct testimony. When he voluntarily puts himself under oath, the logic of the law leads inevitably to this result; although where the statute simply allows him to make a statement, there are judges of eminence who have reached a different conclusion.

In fact, there are few parts of criminal jurisprudence in which American judges in expounding the law, and American legislators in framing the law, do not lean on the side of the defense.

* Day vs. State, 65 Ga. 607.

† State vs. Graham, 74 N. C. 946; State vs. Ah Chuey, 14 Nev. 79; Walker vs. State, 7 Tex. App. 245. A more extended and thorough discussion of the authorities will be found in the *Central Law Journal* of last year, vol. xv, pp. 2, 207.

Much is said with us as to the rights of criminals: so much, that we almost forget that the state has rights against criminals and against those charged with crime, on the maintenance of which the public life depends, and that it is mainly for their maintenance that the state exists,

“ And sovereign Law—that state’s collected will—
O’er thrones and globes elate,
Sits empress, crowning good, repressing ill.”

A sharp lecture was read last winter to the American public by a well-known sociologist, on “The Forgotten Man.” He was the hard-working, law-abiding, unobtrusive man, whom legislators forgot, in their zeal to help the poor, reform the vicious, and grant relief to every interest that clamors and pushes for it.

The noblest feature of modern society is its attainments, not in science and art, but in humanity. We recognize the dignity and worth of man, as man, and recognize it even in the meanest and basest. There is but one temple on earth, says Novalis, and that is the body of man.

But there is a point at which humanity turns into sentimentalism. There is a point where selfishness—that is, putting forward self-protection as the first object—becomes a government.

The American system of criminal prosecutions is one which seldom convicts the innocent; but it is also one which often acquits the guilty. The proportion of acquittals to jury trials is probably three times as great as in England, and ten times as great as in Scotland or on the Continent. There are few civilized governments in which homicide is as frequent as in some of our western and southwestern states and territories; there are none in which convictions for murder are so rare.

The defendant has, under all systems of criminal justice, a great advantage in the matter of pleading. The prosecutor

must formulate his charges with precision and accuracy; but the plea of Not guilty leaves him utterly ignorant of the defense by which he is to be met. It may be an *alibi*, a justification, a claim of temporary insanity. Whatever it be, he learns it for the first time when the trial is begun, and must be ready to meet and disprove it on the instant, with no possibility of a postponement on the ground of surprise.

This embarrassment to the prosecution seems to be an inevitable one. Not so as to the embarrassments set up by our administration of the rules of evidence; for it is these rules which have grown into an artificial net-work, through whose meshes a well-defended criminal can so often slip.

I find no fault, again, with the fundamental principle that the state must satisfy the jury of the prisoner's guilt beyond a reasonable doubt. It speaks well for society when it can afford to say to a citizen who is pursued for a claim, however great, involving no moral wrong or civic degradation, You must pay it, if there is a bare preponderance of evidence against you; and yet say to the same man, if charged with crime, We will declare you innocent, unless we show that there is no hypothesis to be framed which is not inconsistent with your innocence. Only a free state can or will take this attitude. Perhaps no state which does not take it can be free.

But here is it not time to stop?

We have relieved the prisoner from the necessity, ordinarily imposed in civil cases, of pleading the nature of his defense. We have thrown upon the public a burden of proof heavier than it is thought just to impose on any private suitor. Why, at the same time, cut off the counter right which every private suitor has, of putting his adversary to his oath as to the merits of his defense? The historical reason we have already considered. If government can ask a prisoner to testify, they can require it; if they can require it, they can force a compliance. All such force our constitutions forbid; and

far be it from any advocate of law reform to urge a recurrence to it; whether it be the Bavarian plan, now or lately in force, of giving only bread and water to an accused who refuses to make a statement, or the more downright English methods of rack and thumb-screw, fine and imprisonment, discarded two centuries ago.

But between forbidding physical or moral compulsion, and inviting, or even urging a frank disclosure, the difference is wide. We have construed a prohibition to compel as a prohibition to request.

We assume a burden of proof unknown except where the English tongue is spoken; we demand an unanimity in the verdict equally unknown elsewhere; we often permit the jury—a thing unheard of in any other land—to go to their homes and mingle with the friends of the prisoner, while they are deliberating upon his guilt,—and yet we reject the aid of the simple expedient which would occur first of all to any child, of asking the accused what he has to say about the charge against him.

They are still jealous of their government in Great Britain. It is still a royal government, supported by an idle aristocracy: two of the estates of the realm ruling by no other right than that of birth. In prosecutions for political offenses, the interests of these two estates are directly involved, and to one of them the bench itself, in its highest places, belongs.

It is not strange, therefore, that, while not surrendering the procedure of preliminary examinations, close upon the arrest, they have been sedulous to require the magistrate to warn the prisoner that he need not answer, and that, if he does, his words may be used against him.

But with us, government has no other office or end than to order and protect the peace of society. The prisoner is tried before judges, and by prosecuting officers, who were,

directly or indirectly, of his own choosing. The jury is made up of his neighbors; the law is one, directly or indirectly, again, of his own making. He has been, probably, educated at the expense of the state, for the very purpose of giving him the intelligence necessary to govern his conduct as becomes a good citizen. No private prosecutor, as in most countries, is pushing the case against him, for revenge or restitution. He has to contend only with the public, and the public have no interest except to discover the truth, whichever way it lies.

If, then, we would make the punishment of crime as certain here as it is in Europe—I might almost say, as it is in Mexico or China—let us abandon our attempt to fight it without the use of the ordinary weapons that lie at hand; without asking the man who, of all the world, knows best what the facts are, to tell us about them; and without asking him in such a way as to facilitate, rather than to prevent, an honest statement. Let him be brought before the examining magistrate, as he is abroad, before he has time to fabricate an explanation, before he has seen counsel, when the proofs of guilt are fresh. Let him be confronted with these proofs, and asked how he can meet them. If he refuse to say anything, let it be so recorded. If he does speak, let all be written down in his presence, read to him, and signed by him, if he will. And let all be done, not as a matter of favor from him, but of right to the state. Let there be no caution that he need not answer, and no warning that he may be making evidence against himself.

Do you say that an innocent man, under such an examination, may become confused, and answer confusedly or inaccurately? He will certainly be less liable to do so than if questioned unofficially by a wheedling detective or incredulous policeman, and such questioning is as sure to come as it is to be but half remembered.

A fair report, made at the time, in writing, by an impartial magistrate, proves often the best evidence for the accused, and results in his immediate discharge.

To advocate examination of the accused before the committing magistrate is, of course, a very different thing from advocating his examination by the court on his trial to the jury. Both of these examinations form a part of the general continental system, but it is that from the bench which becomes often and justly a matter of reproach.

In France, for instance, the preliminary examination is conducted by the prosecuting officer, in order to determine whether there is or is not ground to prosecute; but when the accused is once informed against and put on trial, the judge is apt to presume his guilt, and exercise all his ingenuity to twist some admission out of him, or perhaps to distort what is said, so that the jury may receive a false impression from it.

The embarrassment of the defendant when actually on trial, and confronting a charge of crime laid against him by the authority of the state, is naturally and necessarily greater than when, at an earlier stage of the proceedings, the state is simply inquiring whether it ought to be put to the expense of a prosecution. The very nearness of the final decision, by a verdict which may convict and may set free, must intensify the excitement of his feelings.

If the prosecutor is allowed to question him now, the interrogation is sure to be unfriendly; it may be, it is even likely to be, if conducted by the judge. Under such circumstances the contest between the questioner and the questioned is too unequal, and innocence may well seem guilt.

A learned member of this Association, in his elementary work on *Constitutional Law*,* has not hesitated to say that the rule "that no person shall be compelled to be a witness

* Pomeroy's *Const. Law*, p. 155.

against himself, can only be supported by that intense reverence for the past which is so difficult to be overcome," and that "there can be no doubt that the states will gradually abandon this provision, and reject it from their constitutions."

I doubt if the prediction comes true; I doubt if it would be well that it should. There may yet come a revolution in social forces, which would make even the use of torture tolerated in courts, were there no fundamental law to forbid. The highest refinement in civilization has, in former ages, not been found incompatible with the highest refinement in cruelty; and the nature of man changes little, beneath the surface, from generation to generation. Lynch-law, within our own borders and among our own people, has been no stranger to the arts of interrogation, aided even by torture, at the foot of the gallows.

Let us keep our constitutional guaranties as they are, but let us read them and apply them like reasonable men. It is enough to reject the use of force, without also refusing even to ask the defendant to speak for himself. It is enough passively to submit to his refusal to answer, without also forbidding judge and jury to draw from it the natural conclusion.

We heard this morning the playful humor with which a distinguished jurist of long service, both at the bar and on the bench, professed his pleasure at listening here so often to young men eager to proclaim the new light which they saw breaking upon the mountain-tops of jurisprudence, and which had not yet been revealed to the dimmer vision of their elder brethren. I can no longer claim the privilege of youth, but let me not be accused of bringing before you any novel speculations, any fancied discoveries of my own. I stand here the advocate of no new, no untried method of procedure. It is our present method which is the innova-

tion on the practice of all lands and all times. It is against experience, against nature; I believe, against reason.

It is no mean distinction to New Jersey that it is the only American state that has steadfastly adhered to the ancient plan. It shows the same spirit of independent judgment and sound conservatism which, under the lead of Patterson, made her influence so great and so healthful in the Constitutional Convention of 1787. And more, perhaps, than anything else in her system of criminal administration, it has made "Jersey justice" proverbial along the Atlantic coast, to signify swift and certain retribution to wrong-doers, at the hands of the law.

America has tried many experiments in the art of government. She has tried none more hazardous than that which has been the subject of our consideration to-night. Is it not true that there are parts of the United States where more criminals are yearly put to death by lynch-law, or by the hand of some private avenger of blood, than by judicial warrant? And is it not true that, in those communities, public sentiment justifies such deeds of violence, because the courts afford too uncertain a remedy; not because they are corrupt, but because they are inefficient?

If we would make American justice as sure as American liberty; if we would banish pleas of temporary insanity from our court-rooms, and mob-violence from our frontiers, let us begin by going back—back to the ancient ways from which a false humanitarianism has led us off. Leaving our constitutions as they are, let us interpret them in their true spirit, and give the state, in its judicial contests with those whom it charges with crime, once more an equal chance.

PAPER

READ BY

SEYMOUR D. THOMPSON.

Abuses of the Writ of Habeas Corpus.

The writ of *habeas corpus* has been justly styled the "Writ of Liberty."* At times it has been used in such a way as to deserve the censure of being called the Writ of Anarchy. The primary object of the English Habeas Corpus Act was to afford a speedy and summary means of relief to those who should be unlawfully imprisoned by the agents of the Crown. A most odious and oppressive form of this imprisonment was that which took place under commitments issued by the secretaries of state, directing the arrest and detention of persons on suspicion of treason,† and upon other charges.‡ The instruments or agents of the secretaries, by whom these arrests were effected, were called *messengers*. There were some forty of them.§ Persons arrested and detained by them were not confined in any of the public prisons of England established or recognized by act of Parliament, to which the commissions of Oyer and Terminer and Jail

* Callahan vs. State, 60 Ala. 65.

† Roe's Case, 5 Mod. 78; S. C. 1 Salk. 346; Hellyard's Case, 2 Leon. 175.

‡ See Yaxley's Case, Carth. 291; Memorial of the Judges, And. 297.

§ In the case of Roe *et al.*, it was said by Sir Bartholomew Shower, in making his argument for the prisoners, that there were forty-two of them. 5 Mod. 78, 82. This was in the seventh year of William III.

Delivery extended, but were confined in the private houses of these messengers. Scattered throughout London, or perhaps throughout England, there were, therefore, some forty private prisons—unknown to the laws, and unvisited by the courts of justice—in which, but for this salutary writ, the king's subjects might languish for an indefinite period of time without being brought to trial. Designed as a means of subjecting to the superintendence of the superior courts and judges, arrests and imprisonments made by ministerial officers and by inferior magistrates, it was never intended that it should interrupt the regular course of justice in the superior courts, or that it should subject the executive department of the government to the superintendence of the judiciary. How far it has been kept within its proper limits in England, it is not my purpose to inquire; but I shall point out that judicial sentiment in America has been so far influenced by the extravagant views of the right of personal liberty with which the American Republic commenced its career, that this writ has been used by the federal courts as the means of subjecting one of the most important functions of the executive branch of the government to the control of the judiciary; that the state courts have, by the same means, attempted to subject the executive department of their own states to judicial control; that the modesty of these tribunals has not withheld them from attempting at times the same control over the executive department of the general government; but that they have attempted by this means to revise its action in executing its treaties with foreign countries, and have even asserted a use of this writ, such as, if carried out by them on the one hand, and yielded to by the officers of the general government on the other, would enable them to arrest the march of the national armies in time of actual war. Nor have the courts of these two jurisdictions, the federal and the state, always stayed

their hands in the use of this writ from the molestation of each other. They have attacked each other's processes and opened each other's prisons. Such a conflict, from the beginning, must have been unequal; and its result must have been foreseen. Questions which were labored by these respective tribunals in ponderous opinions were finally settled amid the thunder of cannon; and under that settlement, as I shall hereafter show, the police regulations of the states, their criminal codes, the decisions of their highest judicatories, and even their constitutions, lie at the feet of the inferior federal judges.

When we consider that the doubtful policy of the founders of the government and of their successors, until a period comparatively recent, committed the execution of the federal laws in part to the judicatories of the states; made the justices of the peace of the states the examining magistrates in criminal cases for the federal tribunals; made the judges of the states federal magistrates for the purpose of executing extradition treaties with foreign countries, for the purpose of naturalizing aliens, and in some cases for the purpose of executing the criminal statutes of the United States; and made the jails and prisons of the states the jails and prisons of the federal government,—it is not a matter of surprise that the judges of the state courts, at an early day, exercising a supposed jurisdiction by means of the writ of *habeas corpus*, should have assumed to say whether a fugitive from the justice of a foreign country should be surrendered;* whether fugitives escaping from slavery in other states should be delivered up pursuant to the Constitution and laws of the Union;† whether persons enlisted in the armies of the United States should be held to military service, or dis-

* *Re Washburn*, 4 Johns. Ch. 106; S. C. Wheel. Cr. Cas. 473; Com. ex. Deacon, 10 Serg. & R. 125.

† *Matter of Booth*, 3 Wis. 1; *Ex parte Robinson*, 1 Bond, 39.

charged therefrom, even in time of war;* and whether a person in the military service of a foreign country should be tried as for a crime in a state tribunal for an act done as a belligerent under the command of his sovereign and in conformity with the laws of nations.† These pretenses, born of an extravagant view of state's rights and state sovereignty, presented a paradox which excites the liveliest curiosity in us, who look back upon them as matters of history; for if a state is a sovereign, and if the United States is another sovereign, these decisions present the spectacle of the courts of one sovereign controlling the officers and agents of another sovereign; interposing in its foreign relations, and even disbanding its armies. If great inconveniences did not arise from the assumption of such a jurisdiction, it was due to the wisdom, the patriotism, and the moderation of the judges who assumed to exercise it. The very existence of such a power, distributed so widely and through so many scattered and irresponsible agencies, should have been a source of serious apprehension. An admonition of what *might* have been done in the exercise of it, should have been found in what actually *was* done. The Supreme Court of New York held and tried a British subject for murder, predicated upon an act done upon the soil of that state as a belligerent during the Canadian Rebellion of 1837, after his immediate release had been demanded of our government by that of Great Britain;‡ and an eminent jurist, holding the office of chief justice of the same state, issued an attachment, for an evasive return to a writ of *habeas corpus*, against a general of

* *Com. ex. Harrison*, 11 Mass. 473; *Com. ex. Cushing*, *id.* 67; *Com. ex. Downes*, 24 Pick. 227; *McCorologue's Case*, 107 Mass. 154; U. S. *ex. Wyngill*, 5 Hall, 16; *Carlton's Case*, 7 Cow. 471; *State ex. Dimick*, 12 N. H. 194.

† *People ex. McLesell*, 1 Hall, 377. This could hardly be called an *abuse* of the writ, the court having refused to discharge the prisoner.

‡ *Prospere, McLesell, supra*.

division commanding the armies of the United States in the field, upon the theatre of actual war.* If the judicial courts of a state could embroil the United States in a foreign war, and then, the war being flagrant, and the country actually invaded, could disband its armies and imprison its generals by means of the writ of *habeas corpus*, what sort of a government would the United States have been? It certainly would not have been a Nation, spelled with a big N. It was not until the year 1858 that it became settled by an authoritative decision of the Supreme Court of the United States that it was beyond the power of the state courts, by the writ of *habeas corpus*, to discharge federal prisoners from custody, and to interfere with the process of the federal courts, or with the agencies of the federal government.† Even then many of the state courts refused to be taught. Notwithstanding the principles thus declared by the Supreme Court of the United States, they limited its authority to the precise case in judgment. They held that it did not extend beyond the case of a prisoner held under *process* emanating from the federal courts; and accordingly they continued to discharge enlisted soldiers and sailors of the United States from the custody of their officers, even during the late war, until the suspension of the privilege of the writ by the President, under the act of Congress of 1863.‡ With the removal of this suspension they revived the practice;§ and, it was not until the year 1871 that the Supreme Court of the United States,|| on a writ of error to the same court whose judgment had been reversed by it thirteen years before, renewed the lesson taught the courts of the states that their jurisdiction did not extend to

* *Matter of Stacy*, 10 Johns. 328.

† *Ableman vs. Booth*, 21 How. U. S. 506 (reversing *Re Booth*, 3 Wis. 16).

‡ *Ex parte Anderson*, 16 Iowa, 595.

§ *Ex parte McCarey*, 2 Am. Law Rev. 347.

|| *In Tarble's Case*, 13 Wall. 397 (reversing *Re Tarble*, 25 Wis. 290).

interfering with the agencies of the federal government, and swept into the limbo of vanities nearly a hundred reported decisions of the state courts in which such a jurisdiction had been asserted and exercised. It may be assumed that these two decisions have finally unfettered, first the judicial, and next the executive, power of the general government from state interference through the agency of this writ.

But the pernicious doctrines already engendered continued in some measure to illustrate the historical fact that courts are greedy of jurisdiction, just as kings are greedy of territory, and apparently in obedience to the same law of human nature. The Constitution reposed in the President of the United States the execution of treaties with foreign countries. In 1842 a treaty was entered into between the United States and Great Britain, which provided for the mutual surrender of fugitives from justice in certain cases.* To give effect to this treaty, and such other like treaties as it was supposed might be from time to time entered into between this and other countries, Congress passed a law in 1848, establishing the mode of procedure in such cases. The distinctive features of this act were that certain judicial officers, federal and state, therein named, the highest in dignity being the Chief Justice of the United States, and the lowest a commissioner specially appointed by a court of the United States to take proceedings under extradition treaties, should, upon "a complaint made upon oath or affirmation," issue a warrant for the arrest of the alleged fugitive, examine the evidence upon which his extradition was demanded, and certify the same, together with the conclusion thereon of such magistrate, to the Secretary of State for his final action. The law made no provision for the intervention of a *third* magistrate by means of the writ of *habeas corpus*. Certainly it is not to be inferred from this that it intended to exclude the

* 8 U. S. Stat. at Large, 576.

proper use of this writ in such cases. But, having committed the examination of the charge against the alleged fugitive to certain designated magistrates, all of whom are presumed to be learned in the law and competent for the exercise of such functions; having required such magistrates to certify the evidence thus taken to the executive department of the government, to which the final decision, whether or not the prisoner should be surrendered, was committed; and having provided no mode for the review or supervision by any other judicial officer of the proceedings or the evidence before such magistrate, the intervention of a third court by the writ of *habeas corpus*, except for the mere purpose of making inquiries into the jurisdiction of the magistrate thus acting, was unwarranted by any principle known to the law. A commissioner of the Circuit Court of the United States, specially appointed to take proceedings in extradition cases, was required by law to certify the evidence taken by him to the Secretary of State. The Circuit Court of the United States, by its writ of *certiorari*, demanded that this evidence be certified to it. The statute required that the prisoner should be held by the marshal, under the commissioner's warrant, to await the final orders of the executive department of the government; but the Circuit Court, by its writ of *habeas corpus*, commanded that the prisoner should be surrendered to it. Having thus gained possession of the prisoner and the evidence upon which his extradition was demanded, those courts, taking upon themselves the functions of the department of the government to whom the decision of this delicate question had been committed, proceeded to examine the evidence minutely, and to decide whether it was sufficient in law to warrant the extradition of the prisoner. They did more. They instituted minute inquiries with the view of determining whether all preliminary steps required by the particular

extradition treaty and by the act of Congress had been taken. They went even beyond this. They invented rules of procedure which were not found in the particular treaty or in the act of Congress, and held a compliance with these rules to be jurisdictional. They held it necessary that a judicial *warrant* should have issued for the arrest of the alleged fugitive in the demanding country, although neither the treaty nor the act of Congress contained such a requirement.* They made up and tried an issue of fact, whether such a warrant of arrest had been issued, and made the detention or the discharge of the prisoner to depend upon the decision of this issue.† They laid down rules as to the particularity with which the crime charged must be described in such a warrant.‡ They made the jurisdiction of the magistrate to issue his warrant for the arrest of the alleged fugitive to depend upon a requisition *previously* made by the government of the country, from whose justice the fugitive had fled, upon the United States;§ ignoring the fact that neither the statute nor the treaty required this;|| that

* *Ex parte Van Hoven* (second case), 4 Dill. 415, 423, before Dillon and Nelson, JJ. *Contra, Re Farez* (second case), 7 Blatchf. 345.

† *Ibid.*

‡ *Re Farez*, 7 Blatchf. 34, 50.

§ *Ex parte Kaine*, 3 Blatchf. 1; *Re Henrich*, 5 Blatchf. 414, 425; *Re Farez*, 7 Blatchf. 34, 45.

|| Our treaty of 1874 with Belgium furnishes an exception to this statement. Its sixth article evidently contemplates a requisition by the demanding government, and the issue of a warrant of arrest by the executive government of the demanded government, as preliminary to the arrest and judicial examination of the alleged fugitive. (18 U. S. Stats. at Large, 807; *Ex parte Van Hoven*, 4 Dill. 411.) Neither the treaty with Great Britain (8 U. S. Stats. at Large, 576), that with Prussia (*Id.*, 965), nor that with Switzerland (11 *Id.*, 303) contains such a provision; and there is nothing in the treaty with Belgium which necessarily implies that magistrates shall not have authority, upon a proper showing, to commit and detain alleged fugitives a reasonable time to await a requisition. In the case of *Duall* (2 Lowell, 367), which arose under

the delays incident to the making of a formal requisition might, in many cases, enable the fugitive to escape; that such a formal demand for his surrender might as well be made after his capture as before; and that the contrary practice, in cases of inter-state extradition, had long been sanctioned by the state courts.* They went beyond this. Notwithstanding the fact that the statute made the jurisdiction of the magistrate to issue his warrant of arrest to depend upon "a complaint made under oath or affirmation," they held that a *mandate*, emanating from the executive department of the government, was necessary to give him jurisdiction, although no such process is mentioned in any law or treaty upon the subject.† Having thus established a process unknown to the law, though it may not have been unknown to the state department, and made this

the treaty with Great Britain, Mr. District Judge Lowell took the correct view of this question when he said, "The judge has nothing to do with the question whether the foreign country has duly authorized an application for the extradition to be made. The law is that, when complaint is made on oath, the judge is to examine the evidence of criminality; and, if he deems it sufficient to sustain the charge, shall certify the same to the secretary of state, that a warrant may issue upon the requisition of the proper authorities of the foreign governments. The requisition is to be made to the executive department, and, in the natural order of things, would be made *after* the evidence is taken and certified. If the authorities of the foreign government should find, on the examination of the evidence, that it does not make out a case which they choose to press, they will make no requisition. And the statute gives them two months in which to complete their action upon the matter."

* *State vs. Buzine*, 4 Harr. (Del.) 572, 575; *State vs. Loper*, Ga. Dec. part ii. 33; *Ex parte Lorraine*, 16 Nev. 63; *Hurd Hob. Corp.* 2d ed. p. 614 *et seq.*, and cases cited. Early jurists assumed that the same practice was proper in cases of foreign extradition. *Matter of Washburn*, 4 Johns. Ch. 106; *S. C.* 3 Wheel. Cr. Cas. 473; *Com. vs. Deacon*, 10 Serg. & R. 125.

† *Ex parte Kaine*, 3 Blatchf. 1; *Re Heinrich*, 5 Blatchf. 414; *Re Farez*, 7 Blatchf. 34; *Re Farez* (second case), 7 Blatchf. 245.

process necessary to the jurisdiction of the magistrate to cause the alleged fugitive to be arrested and brought before him for examination, and consequently necessary to the power of the United States to execute the treaty, they proceeded to determine by what officer it should be issued,* and also with what degree of particularity the crime charged should be set forth therein.† Having thus established several prerequisites to the jurisdiction of the magistrate not found in the statute or in any treaty, they next proceeded, with minute detail, to decide how the jurisdiction should be exercised; how the proceeding before the magistrate should be conducted; whether the accused had a right to cross-examine the complaining official;‡ whether the prisoner should be allowed to testify in his own behalf;§ whether the magistrate might adjourn the proceedings from day to day and from time to time;|| under what circumstances he might refuse an adjournment at the request of the prisoner;¶ whether he might discontinue the proceeding, and afterwards cause the arrest of the prisoner on a new warrant for a crime of the same nature;** what record he should keep of the proceedings and evidence;†† how the evidence, if in a foreign language, should be translated, and

* *Re Farex*, 7 Blatchf. 34, 46; *Ex parte Van Hoven*, 4 Dill. 411, 413; *Ex parte Van Hoven* (second case), *id.* 415, 423.

† *Re Macdonnell*, 11 Blatchf. 79, 96. If they are to be censured for inventing a process unknown to the law, and making it a jurisdictional step in the proceeding, they must be credited with liberality in deciding that the process need not be issued by the President (*Re Farex*, *supra*; *Ex parte Van Hoven*, *supra*), but that if it were issued by the secretary of state it would do; and that it need not do more than describe the offense charged in general terms (*Re Macdonnell*, *supra*).

‡ *Re Farex*, 7 Blatchf. 345, 349.

§ *Ibid.*

|| *Re Macdonnell*, 11 Blatchf. 79, 100.

¶ *Re Farex*, 7 Blatchf. 345, 359.

** *Re Macdonnell*, 11 Blatchf. 170.

†† *Re Henrich*, 5 Blatchf. 414.

the translation verified;* what evidence was competent and admissible before the magistrate, and how documentary evidence from foreign countries should be attested; † and, finally, what evidence is legally sufficient, in respect of its probative force, to warrant a surrender of the prisoner.‡ One would suppose that the exertions of these courts to aid the President in the execution of treaties with foreign nations would end here. But they have not been satisfied with deciding for him upon what evidence this responsible duty should be performed; they have claimed the right, by their writ of *habeas corpus*, to go behind his warrant of surrender, to arrest the prisoner while *in transitu* under such warrant, and to ascertain whether the warrant has been issued in a proper case and upon an examination before a competent magistrate.§

The courts of some of the states have not been more modest in subjecting to judicial review the action of the chief executive of their states in cases of inter-state extradition. The Constitution of the United States imposes upon the states the mutual obligation of surrendering fugitives from justice. The Congress passed an act in 1793 prescribing the mode in which this obligation should be discharged. This statute imposed upon the governors of the states the duty of making the demand on the one hand and the surrender on the other. The governor of the demanded state, while so acting, acts therefore at once under an obligation imposed upon his state as a member of the Federal Union, by the Constitution of the

* *Ibid.*

† *Re Farez*, 7 Blatchf. 345, 352; *Re Henrich*, 5 Blatchf. 414, 423; *Re Stupp*, 12 Blatchf. 501, 521; *Re Fowler*, 18 Blatchf. 430; S. C. 4 Fed. Rep. 303, 317.

‡ *Ex parte Kaine*, 3 Blatchf. 1, 10; *Re Farez*, 7 Blatchf. 345, 358, 359; *Re Macdonnell*, 11 Blatchf. 170, 190.

§ The *British Prisoners*, 1 Woodb. & M. 66, 69. See *Ex parte Milburn*, 9 Pet. 704; *Ex parte Kaine*, 3 Blatchf. 1.

United States, and also in the character of a magistrate appointed by an act of Congress to execute one of the laws of the Union. The correct principles which govern the use of the writ of *habeas corpus* require that the judicial courts in such cases should limit their inquiries to the question whether the governor who has issued his warrant of surrender has issued it in a case *within his jurisdiction*—that is, in a case contemplated by the Constitution and the act of Congress. There is no sound principle which will authorize them to inquire whether the evidence upon which he has acted in the exercise of this exclusive jurisdiction has been properly authenticated, or is otherwise sufficient. They have, nevertheless, asserted this power in repeated instances,* and have gone so far as to hold that it is competent for them, in the use of this writ, to go behind all the papers in the case, and try by parol evidence the question whether the prisoner was in fact in the demanding state when the crime was committed,—that is to say, whether he was guilty of the crime charged.† That they have no such jurisdiction becomes apparent when we consider the dilemma in which they would find themselves if the governor should decline to certify to them the evidence upon which he acted. Could a court, or a single judge issuing the writ of *habeas corpus*, *ex-officio*, send a writ of *certiorari* to the governor of his state, calling upon him to certify to such court or judge the records of the executive office? Suppose they were to issue such a writ to the governor, and he should see fit not to obey it, could they enforce obedience to it by process of contempt? Could they

* *B. Manchester*, 5 Cal. 237; *Hartman vs. Axeline*, 63 Ind. 344; *Ex parte Sheldon*, 34 Ohio State, 319; *Wilcox vs. Nolze*, 34 Ohio State, 529; *People ex. Brady*, 56 N. Y. 182; *People vs. Pinkerton*, 77 N. Y. 245; *People vs. Danahue*, 84 N. Y. 438. It may perhaps be pleaded in extenuation of the state courts, that a federal judge set the example. *Ex parte Smith*, 3 McLean, 121.

† *Wilcox vs. Nolze*, 34 Ohio State, 529, 534.

imprison the chief magistrate of the state—the chief embodiment and exponent of its sovereignty? The obvious answer to these questions reveals the unseemly spectacle which the courts present when they endeavor to exercise a jurisdiction which is plainly committed to another department of the government, and which in no sense belongs to them.*

It is true that our American governments, state and federal, are governments of checks and balances. Unchecked arbitrary power is contrary to the spirit of our institutions. But power is not properly checked when one department of the government overrides another and usurps its functions. The judicial courts interpose a proper check upon the executive branch of the government, when they declare unlawful the acts of the officers of that department, done in excess of their jurisdiction. In all official action there must be a finality somewhere; and in the surrender of fugitives from justice, the final exercise of discretion may well rest with the executives of the states, where the law has placed it,—magistrates who are responsible to the people for the proper exercise of

*The Court of Appeals of New York, in 1874, asserted the doctrine that it was competent for a justice of the Supreme Court of that state, issuing the writ of *habeas corpus, ex officio*, to go behind the governor's warrant of surrender, in such a case, and pass upon the sufficiency of the affidavit upon which the requisition of the governor of the demanding state was based; and the Court of Appeals, being of opinion that the affidavit was insufficient, directed that the prisoner be discharged. (*People vs. Brady*, 56 N. Y. 182.) In subsequent cases, the court reaffirmed this doctrine; but they were obliged to add a modification which made the doctrine amount to something like this: That it is a very good rule for the court or judge, on *habeas corpus*, to apply, when he can get hold of the papers on which the governor acted; but if the governor, in the exercise of his official discretion, declines to submit such papers to judicial examination, there is no power in the court to compel him to do so; nor are they, by reason of his refusal, authorized to discharge the prisoner; but they are bound to presume that he acted upon documents and upon evidence which were sufficient. (*People vs. Pinkerton*, 77 N. Y. 245; *People vs. Donohue*, 84 N. Y. 438.)

their functions, under the obligation of their official oaths, equally with the judges of the court. They ought conclusively to be presumed to be capable of understanding and properly discharging the duties which the law has devolved exclusively upon them. In the discharge of such duties they are aided by the experience of their office, both during their own incumbency and that of their predecessors. They have a competent legal adviser in the person of the attorney general; and the execution of this delicate duty may better be reposed finally in them as remitted to the uncertain discretion of a scattered body of judicial magistrates, exercising the power of revising the executive action.

The judicial courts have not only assumed the power, by means of the writ of *habeas corpus*, to superintend and control the action of the executive department of the government, both state and federal, but they have, by the same process, assumed to pass upon the validity of the government itself. In this way the Chief Justice of the United States, in 1868, decided that persons holding office in the states lately in rebellion, who were disqualified by the ousting ordinance of the Fourteenth Amendment, were nevertheless entitled to hold their offices until the constitutional provision should be enforced by legislation.* The Supreme Court of South Carolina, in 1876, determined, under this writ, that the acting governor of that state was not entitled so to act,† and, in 1873, the then Supreme Court of Texas, in a sham case, gotten up by the fictitious arrest of an old negro, decided that the *de facto* government of Texas was not the government *de jure*, refused to allow the state's attorney to enter a *nol. pros.* in respect of a crime with which the relator was not charged, discharged the relator from an

* *Cesar Griffin's Case*, Chase's Decisions, 364; S. C., *sub nom. Re Griffin*, 25 Tex. Supp. 623.

† *Ex parte Smith*, 8 S. C. 495.

imprisonment to which he had never been subjected, and dismissed the existing government of Texas without costs.* When, at about the same unhappy period of our history, a judge of a district court of the United States, by an injunction issued at midnight, dispersed the legislature of a state and suppressed its government, some of us, who were then young at the bar, concluded that the writ of injunction was a very great writ. In view of the instances which I have cited, the same dignity must certainly be accorded to the writ of *habeas corpus*. But these are not proper uses of this writ. Whether a person, *primâ facie* in possession of a public office, is rightfully entitled to exercise the functions of such office, is not properly triable in such a summary and *ex parte* proceeding, to which neither the incumbent of the office nor the state is a party.† The parties who are interested in contesting this question, and who are entitled to contest it, are not before the court. The court itself may not be such a tribunal as, under the Constitution and the laws, has jurisdiction to try the title to such an office; and, so far as it operates upon the rights of the incumbent or of the state, its judgment in such a case, when tested by sound legal principles, is as clearly void for want of jurisdiction as the act of an usurping executive officer can be.

These extraordinary uses of the writ of *habeas corpus* may well amuse the student of history, and call forth judicious criticism, but they no longer excite apprehension. They were, in a large measure, the offspring of troublous times, or of conditions which have passed away. But the steady growth of the power exercised by this means by the federal tribunals, and the extraordinary pretensions which it has in recent years assumed, remain a subject of serious concern.

* *Ex parte Rodriguez*, 39 Tex. 705.

† *Sheehan's Case*, 122 Mass. 445; *Re Wakker*, 3 Barb. 162; *Ex parte Call*, 2 Tex. App. 497; *Re Ah Lee*, 6 Sawy. 410; S. C. 2 Crim. L. Mag. 336.

The founders of our federal judicial system, in conferring upon the national courts the power to issue writs of *habeas corpus*, added this proviso: "That the writ of *habeas corpus* shall in no case extend to prisoners in jail, unless where they are in custody under or by color of the authority of the United States, or are committed for trial before some court of the same, or are necessary to be brought into court to testify."^{*} This proviso had the effect of staying the hands of the federal tribunals in the use of this writ, in all cases where prisoners were held in state custody, except where they were committed for trial before a court of the United States, or were necessary to be brought before such a court to testify.[†] An *attaché* of a foreign legation, arrested for a crime by a state magistrate, in violation of the privileges of his sovereign and of the law of nations, could not, in consequence of this proviso, be discharged on *habeas corpus* by a court of the United States.[‡] A person prosecuted by a state for acts done as a belligerent against the United States during the late Civil War, could not be enlarged by one of the national courts through the use of this writ.[§] For more than forty years the writ of *habeas corpus* was used by the federal courts subject to the restraints imposed by this proviso. Then, in 1833, came the nullification ordinance of South Carolina, followed by arrests under state process of revenue officers of the United States. No government capable of preserving its own existence, or worthy of the name, could submit to have the collection of its revenue resisted, and the enforcement of its laws impeded in this way: nor could it brook the delays consequent upon regular trials in the state courts, appeals to the state court of last resort, and writs of error to

Act of Sept. 24, 1789, ch. 20; 1 U. S. Stat. at Large, 82.

^{*} *Ex parte Donn*, 3 How. U. S. 103. See also U. S. vs. French, 1 Gall. 2.

[†] *Ex parte Cabrera*, 1 Wash. C. Ct. 232.

[‡] *Ex parte McClann*, 5 Am. Law Reg. N. S. 158, note.

the Supreme Court of the United States. A speedy remedy was necessary for the protection of its own agencies against unlawful state interference; and this remedy was found in the act of 1833, "to provide for the collection of duties on imports," the seventh section of which gave the courts of the United States power to grant writs of *habeas corpus* "in all cases of a prisoner or prisoners in jail or confinement where he or they shall be committed or confined, on or by any authority or law, for any act done or omitted to be done, in pursuance of a law of the United States, or any order, process, or decree of any judge or court thereof, anything in any act of Congress to the contrary notwithstanding." * Twenty years later the provisions of this salutary law were turned against those who, by the use of state process, attempted to obstruct the enforcement of the Fugitive Slave Law of 1850.† Then, in 1837, came the Canadian Rebellion and the complications which grew out of the attack by a force of British troops upon the steamer *Caroline*, moored to the shore of the state of New York in the Niagara river, which steamer had been employed in conveying supplies and munitions of war to a force of Canadian insurgents on Navy Island. A member of this attacking force was arrested in the State of New York and indicted for murder. After some correspondence, the British government demanded of our government his immediate release. In the face of this demand, the Supreme Court of New York refused to discharge him on *habeas corpus*.‡ A serious international complication might have followed, but for the accidental circumstance that, upon his trial under the indictment for murder, he was acquitted. The inability of the

* Act of March 2, 1833, ch. 57; 4 U. S. Stat. at Large, 634.

† *Ex parte Robinson*, 6 McLean, 355; *Ex parte Jenkins*, 2 Wall. Jr. 521; *U. S. vs. Morris*, 2 Am. Law Reg. O. S. 348.

‡ *People vs. McLeod*, 1 Hill, 377.

federal government to deal with such a case through its own tribunals became thus apparent; and the Congress, to meet such a case, passed the act of 1842, which clothed the national courts with power to grant writs of *habeas corpus* in all cases of aliens in confinement for acts done under the authority or sanction of their government, or under the law of nations.* This statute gave an appeal, in the cases of *habeas corpus* authorized by it, to the Supreme Court of the United States; and it is the only federal statute relating to the writ of *habeas corpus* which retains this characteristic,† except those relating to the territories. Then followed the Civil War, and the act of 1863 authorizing the President, by proclamation, to suspend the writ of *habeas corpus* in certain cases, and providing a mode by which federal prisoners might be speedily brought to trial.‡ This ended in the emancipation of four million slaves. The nation which had emancipated them was bound to establish and protect them in their civil rights. The celebrated law enacted for that purpose in 1866§ was deemed ineffectual without a further extension of the powers of the national courts in the use of the writ of *habeas corpus*. This led, in 1867, to a radical and sweeping extension of the jurisdiction of these courts under this writ to "all cases where any person may be restrained of his or her liberty in violation of the Constitution or of any treaty or law of the United States."|| As construed by the federal judges, this provision has wiped out as with a sponge the proviso of the act of 1789; has clothed the dis-

* Act of Aug. 20, 1842, ch. 257; 5 U. S. Stat. at Large, 539.

† Rev. Stat. U. S. §§ 763, 764.

‡ Act of March 3, 1863, ch. 81; 12 U. S. Stat. at Large, 755. See *Ex parte Milligan*, 4 Wall. 3, 117.

§ Act of April 9, 1866, ch. 31; 14 U. S. Stat. at Large, 27.

|| Act of Feb. 5, 1867, ch. 28; 14 U. S. Stat. at Large, 385. This provision is embodied in section 753 of the Revised Statutes of the United States.

trict and circuit judges of the United States with power to annul the criminal process of the States, to reverse and set aside by *habeas corpus* the criminal judgments of the state courts, to pass finally and conclusively upon the validity of the criminal codes, the police regulations, and even the constitutions of the states.

No doubt it was intended by the framers of the act of 1867, that persons arrested upon state process might be enlarged by the federal judicatories by means of this writ. But it is not at all clear that it was intended that it should become a means in the hands of the federal district and circuit judges of revising and reversing the judgments of the courts of the states without regard to their rank or dignity. The writ of *habeas corpus* is a common-law writ. Its origin reaches back into the night of English history so far that no man can fix its date. Its use has been circumscribed by certain ancient and well settled principles. One of these principles is that it cannot be used as a means of reversing and annulling a judgment of a superior court of record having general jurisdiction of the subject-matter in respect of which the judgment was rendered. This doctrine, declared by the English and American courts in several hundred reported judgments, reaching back through a period of two centuries, has never been better expressed than by Chief Justice Marshall, in giving the judgment of the Supreme Court of the United States in the celebrated case of *Watkins*: "The prisoner is detained in the prison by virtue of the judgment of a court, which court possesses general and final jurisdiction in criminal cases. Can this judgment be re-examined upon a writ of *habeas corpus*? This writ is, as has been stated, in the nature of a writ of error, which brings up the body of the prisoner with the cause of commitment. The court can undoubtedly inquire into the sufficiency of that cause; but if it be the judgment of a court of competent jurisdiction,

especially a judgment withdrawn by law from the revision of this court, is not that judgment in itself sufficient cause? Can the court, upon this writ, look beyond the judgment, and re-examine the charges on which it was rendered? A judgment, in its nature, concludes the subject upon which it was rendered, and pronounces the law of the case. The judgment of a court of record, whose jurisdiction is final, is as conclusive on all the world as the judgment of this court would be. It is as conclusive on this court as it is on other courts. It puts an end to inquiry concerning the fact by deciding it."⁶ The English judges announce the same principle by saying that the writ of *habeas corpus* never extends to the case of a prisoner in execution under a judgment rendered according to the course of the common law.⁷ The judges of the state judicatories discharge their official functions under an oath to support the Constitution of the United States, equally with the judges of the federal courts. The Constitution of the United States, the acts of Congress made in pursuance thereof, the treaties made with foreign countries—while not being laws of the state, are, nevertheless, laws *within* the state. They are, by the terms of the Constitution itself, the "supreme law of the land." Every judge of a state court must, upon the obligation of his oath, administer them and give effect to them as such; and his obligation to do so is just as strong as the same obligation when resting upon the shoulders of a judge of a federal court. If, acting within the general scope of his jurisdiction, in pronouncing judgment in a criminal case, he adjudges that the defendant suffer punishment for a crime, when, under the Constitution and laws of the United States, he ought not so to suffer, he has, at most, committed an error. He has committed no greater error than he commits when, in pronouncing such a judgment, he condemns the accused

⁶ *Ex parte Watkins*, 3 Pet. 193, 202.

⁷ 1 Le. Campbell in *Ex parte Lees*, El. Bl. & El. 828, 830.

person to suffer contrary to the laws of the state which he is administering. There is no principle known to the common law, and none embodied in the English Habeas Corpus Act, by which this error is to be reversed in a collateral proceeding by means of the writ of *habeas corpus*. It is true that courts have at times departed from this principle; but, except in the cases which I am about to consider, the courts which have done so have been courts possessing an *appellate* or *superintending* jurisdiction over the courts whose judgments have been thus reversed or corrected.* In the language of Chief Justice Marshall, his judgment has pronounced the law of the case; and, however obvious to another judge, or to another tribunal, the error of that judgment may be, it must stand as the law of the case until reversed in a direct proceeding given by law for that purpose. It is a well settled principle of statutory construction that statutes relating to a subject founded upon the common law are to be construed with reference to the rules and principles of the common law, and are not to be extended beyond the plain import of their terms, when in derogation of that law. This principle forbids that the act of 1867 should be extended to the overthrowing, in collateral proceedings by the summary process of *habeas corpus* used by the inferior federal judges, of the judgments and decrees of the courts of the several states. They have not, it is true, denied this salutary rule; but they have proceeded upon the view that the cases before them did not fall within it. They have disclaimed the purpose of revising, upon *habeas corpus*, the judgments of the state courts for mere error; but they have asserted the right to pass upon the *jurisdiction* of these courts, and the validity of the laws upon which that jurisdiction is founded, when tested by the

* *People vs. Liscumb*, 60 N. Y. 559; *Ex parte Lange*, 18 Wall. 163; *Ex parte Rowland*, 104 U. S. 604; *Ex parte Curtis*, 106 U. S. 371; *Ex parte Carll*, *id.* 521.

Constitution of the United States, the acts of Congress, and treaties made with foreign countries. In so holding, they have forgotten that the question was not merely a question of the jurisdiction of particular courts, but a question of the jurisdiction of a *state*. It was not a question of *judicial power* merely, but of *sovereign power*. Where the question assumes this magnitude, there is no sound principle under which its erroneous decision renders void the judgment in which such decision is involved, in the sense that it is a mere nullity, liable to be disregarded or overthrown in any collateral proceeding; liable to have the process by which it is sought to execute it intercepted and annulled by the process of a co-ordinate tribunal, such process affording no protection to the officers who attempt to execute it, but they being mere trespassers. It is true that a court cannot create for itself a jurisdiction which it does not possess, by deciding that it has such jurisdiction; but where the question involved does not relate to its own peculiar powers, but to the powers of its sovereign, its judgment upon that question, by every sound principle, concludes the question for the purposes of the particular case until regularly reversed by appeal or writ of error, as much as it concludes any other question involved in the case. By thus assuming to pass upon the jurisdiction of the courts of the states, these inferior federal courts lift themselves out of the category of courts co-ordinate with those of the states, and take upon themselves the exercise of a *superintending jurisdiction* over the state tribunals. It cannot be doubted that they have come to regard themselves as entitled to exercise, by this means, a supervisory authority over the state courts, because they have said so.*

* Thus, in *ex parte* Bridges, 2 Woods, 428, 430, Mr. Justice Bradley, at circuit, used this language: "It is contended, however, that where the defendant has been regularly indicted, tried, and convicted in a state

Such a use of the writ of *habeas corpus* might not produce serious concern, if the law afforded a means by which the judgments of the federal district and circuit courts, where such judgments result in annulling the laws or constitutional ordinances of the United States, might be brought before the Supreme Court of the United States for revision. But there is no such provision of law. Proceedings by *habeas corpus* are deemed to be civil proceedings. If two judges happen to sit upon the federal bench at circuit in a case under this writ, and they happen to differ in opinion, the question of difference may be certified to the supreme court for determination, but only after judgment, the judgment being entered according to the opinion of the presiding judge.* If the proceeding results in *remanding* the prisoner to custody, the Supreme Court of the United States may, asserting by means of its writs of *habeas corpus* and *certiorari*, an appellate jurisdiction which it has long used,† bring up the proceedings for revision.‡ But where it results in *discharging* the prisoner, it is, except in the single case of the arrest of aliens for acts done under the authority of their government, already mentioned, a finality, although it may also result in

court, his only remedy is to carry the judgment to the court of last resort, and thence by writ of error to the Supreme Court of the United States, and that it is too late for a *habeas corpus* to issue from a federal court in such a case. This might be so if the proceeding in the state court were merely erroneous; but where it is void for want of jurisdiction, *habeas corpus* will lie, and may be issued by any court or judge *invested with supervisory jurisdiction in such case*." The judge who was "invested with supervisory jurisdiction" in that particular case, was a district judge, from whose decision (*sub nom.* Brown vs. United States, 14 Am. Law Reg., N. S. 566) the case was taken on appeal to the circuit court.

* *Ex parte* Tom Tong, 17 Centr. L. J. 89.

† *Ex parte* Hamilton, 3 Dall. 17; *Ex parte* Burford, 3 Cranch, 448; *Ex parte* Bollman, 4 Cranch, 75; *Ex parte* Yerger, 8 Wall. 85; *Ex parte* Lange, 18 Wall. 163; *Ex parte* Jackson, 96 U. S. 727; *Ex parte* Virginia, 100 U. S. 339; *Ex parte* Reed, *id.* 13; *Ex parte* Siebold, *id.* 371.

‡ *Ex parte* Yerger, 8 Wall. 85; *Ex parte* Reed, 100 U. S. 13.

overturning a law or a constitutional ordinance of a state. In this way the inferior federal courts have unlocked the penitentiaries of the states,* exercised the power and authority of passing finally and conclusively upon the validity of state laws, and even of the ordinances of state constitutions; † and we have recently seen the extraordinary spectacle of a judgment of the supreme court of a state subjected, by means of the writ of *habeas corpus*, to re-examination before a federal district judge, not indeed in respect of its merits, but in respect of the question whether the court which rendered it was a court at all. ‡

I stated at the outset that the police regulations of the states, their criminal codes, the decisions of their highest judicatories, and even their constitutions, lie at the feet of the inferior federal judges. In view of what I have now pointed out, I ask your deliberate judgment upon the question whether it is not so. Is it not apparent that these judges, by a vigorous use of the writ of *habeas corpus*, intercepting the regular course of criminal justice in the states, may prevent the important questions which they thus assume to decide, from ever reaching a settlement in the Supreme Court of the United States? How, let me ask you, will such a question as was decided by the federal circuit court in California, in Parrott's Chinese case,§ ever get to the Supreme Court of the United States, as long as a federal judge stands ready to release every prisoner, whether before or after judgment, arrested or imprisoned under the constitutional ordinance and statute which the federal court in that case declared null and void? What motive will he have for prosecuting an appeal to the highest court of the state, and then a writ of error to the Supreme Court of the United

* *Ex parte Bridges*, 2 Woods, 428; *Ex parte Houghton*, 7 Fed. Rep. 657; *Re Wong Yung Quy*, 6 Sawy. 237; *Re Ah Chong*, 6 Sawy. 451.

† *Parrott's Chinese Case*, 6 Sawy. 349.

‡ *Re Ah Lee*, 6 Sawy. 410.

§ 6 Sawy. 349.

States, when a federal judge stands ready to unlock the jail or penitentiary and discharge him at any stage of the proceedings? Am I not justified, then, in asserting that the inferior federal courts have, by the use of the writ of *habeas corpus*, at once asserted a final appellate jurisdiction over the courts of the states, within the limits prescribed by their own views of the law, and at the same time absorbed an essential portion of the appellate jurisdiction of the Supreme Court of the United States? Was it ever intended by those who formed our federal system that the final decision of the gravest questions of constitutional law affecting the sovereign rights of the states should be committed to the inferior federal courts? On the contrary, did not the Constitution create *one* court to whose jurisdiction the final decision of such questions was to be committed?

The duty of supplying a remedy for this extraordinary state of things rests with Congress. Whenever a case has passed to judgment in a state tribunal, if the defendant thinks he is imprisoned contrary to the Constitution of the United States, to an act of Congress, or to a public treaty, he should be put to his appeal to the highest court of his state in which the question is examinable, and then to a writ of error to the Supreme Court of the United States. If these processes are thought too slow to vindicate the right of personal liberty, the least that Congress can do is to provide a mode by which the decisions of the federal circuit and district courts may be re-examined in the Supreme Court of the United States. Such an appellate proceeding need not operate as a *supersedeas* of the judgment of the federal court; it need not bar the prisoner of his right to an immediate release, if that be his right; but the state whose laws or constitutional ordinances are thus overturned, should be allowed in some way to bring the questions of their validity to the arbitrament court appointed by the Constitution for the final settlement of such questions.

ANNUAL ADDRESS
BY
JOHN W. STEVENSON.

JAMES MADISON.

Gentlemen of the American Bar Association,—The wisdom of our fathers has vouchsafed to us a constitution of government marvelous in its conception, most beneficent in its results.

The century has not yet closed within which thirteen independent sovereign states, weakened and worn down by a protracted and bloody revolutionary struggle for their independence against the arbitrary oppression of their mother country; embarrassed with debt; overwhelmed with a depreciated and almost worthless paper currency; with limited powers; and at a period (it has been said) the most critical, if not the most fearful, in the history of the human race, being that preceding the early French Revolution,—formed and ratified the Constitution of the United States, creating thereby the union of the states under a compound form of constitutional self-government, the constitution enumerating all the powers delegated to the new government, reserving all others to the states or to the people.

The far-seeing founders of this experimental system of government, versed as they were in the former failure of popular efforts in that direction, not less than thoroughly conversant with the character, circumstances, and genius of the people whose organs they were in that great work, sought to found a free republic in which the people were

the source of all sovereign power, empowered to administer the government through certain delegated agencies, to each of which was assigned and marked out certain well-defined orbits of action, prescribed in the Constitution, declared to be the supreme law, binding personally upon the people and their agents, and so to remain until changed by a like solemn and authentic act of the public will, in manner and form prescribed therein.

It was under such a government, with its mutual checks and balances, its barriers against every assumption of arbitrary, unlicensed power—from within or from without; from one, from the few, or the many—and especially by a just and proper distribution of the federal power with the local systems of the states, that its authors foresaw the highest guarantee for public order, peace, and individual liberty. To-day, as we look back on the faith and courage of these founders of our government, after the experience of ninety-six years of their work, what American heart is not lifted up in thankfulness to God for his merciful protection, and with grateful wonder at the reach of practical wisdom and far-seeing statesmanship displayed in the formation of the Constitution of the United States! Compare, I pray you, the condition of the country then and now.

With a population of three millions when our national existence commenced, we number to-day more than fifty millions of freemen; and that proportionate influx continues annually to increase as the years flow onward. Our boundaries, then not reaching the gulf of Mexico, extend now from Alaska to Mexico, and from the Atlantic to the Pacific oceans.

Our revolutionary debt has been long since extinguished; our national faith and credit maintained throughout the world; the American flag covering every sea; civil and religious liberty upheld; the rights, claims, and interest of

the people faithfully preserved and fearlessly maintained ; and our republic, the power of freedom and the open foe of all human oppression, stands at this moment in the forefront of the nations of the world.

Such have been some of the triumphs and blessings of the government created by the Constitution of the United States. It has been said by an eminent American statesman, now passed away, that the personal character of our public men—their moral principles, their intellectual qualities and attainments, the circumstances which have contributed to form or develop them in either aspect—become an interesting and attractive subject for historic or professional inquiry, and, by a natural and just relation, often go hand in hand with the great public questions in which they have in former years borne a distinguished part.

Concurring in the justice of this sentiment, I have persuaded myself that a brief notice of the life, public services, and a few personal reminiscences of a prominent actor in the formation and establishment of the great constitutional compact of government and union which crowned the labors of our revolutionary sages ; of one who subsequently became the pure, wise, and able administrator of the government which that Constitution created, might prove to my professional brethren of this Association not wholly an uninteresting topic on which to address them.

I am therefore briefly to speak to you of James Madison, the fourth President of the United States. This illustrious Virginian was born on the 16th day of March, 1751, at the house of his maternal grandmother, Mrs. Eleanor Conway, on the north side of the Rappahannock River, in the county of King George, in the commonwealth of Virginia.

The residence of his parents at that time was in the county of Orange, fifty or sixty miles distant ; but his birth

took place during a visit of his mother to her ancestral home in the Northern Neck of Virginia, a designation which was originally, and is still popularly confined to the narrow slip of land lying on the tidewater, between the Potomac and Rappahannock rivers, beginning below Fredericksburg, and running eastwardly to the Chesapeake Bay, including the present counties of King George, Westmoreland, Northumberland, and Lancaster.

That peninsula has been consecrated in the annals of Virginia as the birthplace of many of her most illustrious sons. There Washington, the Lees, the Monroes, the Masons, the Carters, first saw the light. Madison was thus "from the moment, not less than by the accident of his nativity, brought into early and close proximity and fellowship with many of those with whom he was destined in after life to become associated in some of the most eventful passages of his future life, and of the public history." His father, bearing the same name with himself, was a large landed proprietor, and devoted himself to rural pursuits. It does not appear that he was ever engaged in political affairs. He was a leading man in the business of his county, and held during the period of the Revolutionary War the ancient traditional office of "county lieutenant," derived from the institution of the mother country, the duties of which he performed with patriotic zeal and diligence.

He resided during his whole life upon the Montpelier estate, in Orange County, which became at his death the residence of his son James, as it had been of his father Ambrose. It was always the abode of a charming hospitality, rendered doubly attractive by the picturesque grandeur of its mountain scenery, and the heartiness and cordiality of its possessor. The mother of Mr. Madison, Eleanor Conway, was a most lovely and accomplished

woman, and it was her excellence which largely added to the attractions of that lovely home. •

The young Virginian, the eldest of a family of seven children, began his novitiate at a school of much reputation at that day, in the county of King and Queen, conducted by a Scotchman named Donald Robertson. In this school he was instructed in the Latin, Greek, French, and Spanish languages. He subsequently prosecuted his studies at home, under the tuition of Rev. Thomas Martin, of New Jersey, and the established minister of the parish, who lived at that time in the family of Montpelier, and whose brother subsequently became the governor of North Carolina.

James Madison, having been well prepared, entered the freshman class of Nassau Hall in the year 1769. What induced young Madison to select a college in New Jersey in preference to that of William and Mary, in Williamsburg, Virginia, at which most of the young Virginians then matriculated, and which enjoyed a great reputation, will probably never be certainly known. Whether it was the supposed unhealthiness of the climate in lower Virginia, especially upon a resident of the mountains; or to an unfortunate condition of affairs between the visitors of William and Mary College and the faculty of that college, which was at that time existing; or to the then nascent reputation of Nassau Hall, largely increased by the accession of Dr. Witherspoon, a year or two before, to the presidency of that institution, with the prestige of a brilliant European renown, alike as a patriot, a philosopher, and a scholar, will probably never be known; nor is it important that it should be; for, whatever the cause, none will doubt that James Madison's collegiate course at Princeton, the qualification and greatness of Dr. Witherspoon and his associates as professors; and the political and public occurrences which were, at the time young Madison entered

college, in 1769, exciting both continents, became, conjointly, potential factors in shaping and influencing his after life.

The year 1769 was pregnant with momentous events. It witnessed the fatal renewal of the controversies between the colonies and the mother country, which were so soon to merge into a bloody revolution, and end in the disruption of all allegiance to the British Empire.

While these agitating events were beginning to excite America just as Madison was entering college, by a strange coincidence they were equalled by others of profounder interest occurring at the same period in the domestic politics of England.

The ever-noted resolution of the House of Commons nullifying the election of John Wilkes from the county of Middlesex, so memorable in English parliamentary history, dates from that year. His exclusion added fresh tinder to the flame of political excitement, with which the question of American freedom was already beginning to convulse the British Empire.

In one of the earliest letters written by young Madison from Princeton, dated 10th August, 1769, he incloses two pamphlets entitled *Britain's Intercession for John Wilkes*, for the perusal of his father and his late tutor, Rev. Thomas Martin.

Among the political writers of that hour, one will forever signalize the year 1769 by the grandeur of its renown, as that in which the letters of Junius to the *Public Advertiser* first appeared.

Such thronging issues at home and abroad were well calculated to stir and arouse the minds of the young manhood of the American colonies. Madison was naturally and by training especially interested in these pending questions. This interest was gradually intensified by his college associations. There was in the kindred zeal and

high scholarship of his associates much that impelled young Madison forward in his unremitting efforts of self-discipline and improvement. Among these classmates and cotemporaries were Samuel Stanhope Smith, the son-in-law of Dr. Witherspoon, and his successor in the presidency of Nassau Hall; Brockholst Livingston, afterwards judge of the Supreme Court of the United States; William Bradford, Attorney General of the United States, appointed by George Washington; Aaron Burr; Morgan Lewis, of New York; John Henry, who became member of Congress of the Confederation, senator, and governor of Maryland; Henry Lee; and Aaron Ogden, of New Jersey. With many of these associates Mr. Madison was destined to renew, upon the theatre of a wider and more distinguished public service, the intimacy of their early collegiate life.

Mr. Madison took his bachelor degree in 1771 at Princeton, having completed the entire collegiate course of junior and senior classes in a single year. He returned a year afterwards as a resident student to study Hebrew, and to avail himself of the advantages of the college library and the benefit of increased attention paid to metaphysical and historical study, introduced by Dr. Witherspoon. It was here, it has been said, "that Mr. Madison acquired the habit of systematic study, and formed a taste of that sort of inquiry which in after life gave to his political writings a philosophic cast, which distinguished them eminently and favorably from the productions of the ablest of his cotemporaries."

The young men both at Williamsburg and at Princeton, in those days, were animated with a high spirit of public liberty and a jealous love of constitutional freedom. One of the outgrowths of this patriotic excitement among the students at Princeton was the formation of a new society, "The American Whig Society," of which Mr. Madison is

reported to have been one of the chief founders, and which, it is believed, still survives and prospers.

Mr. Madison left Princeton in 1772, then twenty-one, to return to Orange County, and take up his residence at his paternal home, with a bright intellect, systematically trained to philosophic, clear thought, and filled with information and learning.

The limits of this paper will not permit me to go into a lengthened sketch of Mr. Madison's life, or of his eminent public services. I must confine its statements to a brief summary of a few of the most brilliant and eventful, which marked his long and valuable life.

Mr. Madison entered the public service for the first time as a representative from Orange County, to the convention which assembled in Williamsburg on 9th May, 1776. It was a convocation of "the Conscript Fathers of the Colony, called together by a crisis of the most momentous character, to take counsel for the public liberty and safety." Upon its roll of membership were found the names of Edmund Pendleton, its President; George Mason, Patrick Henry, George Wythe, Thomas Ludwell Lee, Robert Carter Nicholas, Archibald Cary, with other names lustrous in Virginia's calendar, who, by their heroic devotion to liberty, had at that early day consecrated themselves in the popular heart, as fearless leaders of a public opinion indignant under further subjection to English oppression, and determined to be free. The time had come for final severance of the colony from the mother country, and the necessity seemed self-evident for a new and independent government. A nobler band of enlightened statesmen was never assembled in the cause of liberty and for the rights of man. In vain would we look for superior proofs of wisdom, talent, and patriotism.

The convention assembled on the 9th of May, 1776. Upon the fourteenth it resolved itself into a committee of

the whole to consider the state of the colony, and reported progress through its Chairman, Mr. Cary, and asked leave to sit again. Leave was granted.

On the succeeding day, May 15, 1776, the convention again resolved itself into a committee of the whole, and after some time spent therein, the committee rose. The President resumed the chair, and Mr. Cary, the Chairman, reported they had come to certain resolutions, which he read in his place, and then delivered in at the clerk's table, where the same were again twice read, and *unanimously* agreed to, one hundred and twelve members being present. (See Journal of Convention, p. 12.)

And what were these resolves which evoked such unanimity at a time of intense popular excitement and public danger from this assembly of wise and brave men?

Resolutions recapitulated in a clear, vigorous summary the wrongs inflicted by the King and Parliament of Great Britain upon her American colonies. They declared that there was no alternative "but abject submission to the will of these overbearing tyrants, or a total separation from the Crown and government of Great Britain, uniting and exerting the strength of all America for defense, and forming alliances with foreign powers for commerce and aid in war," and concluding with solemn and absolute instructions to the delegates from Virginia in the General Congress, "to propose to that body to declare the United Colonies free and independent states, absolved from all allegiance to or dependence on the Crown or Parliament of Great Britain; and they give the assent of this colony to such declaration, and to whatever measures may be thought proper and necessary by the Congress for forming foreign alliances and a confederation of the colonies."

This was Virginia's first authentic trumpet-note of liberty to the Old and New World. It was the first decided move-

ment of a competent authority in any of the colonies in favor of independence.

The Provincial Congress of North Carolina had, it is true, on the 12th of April, 1776, passed resolutions which empowered their delegates in Congress to concur with delegates of the other colonies in declaring independence and forming foreign alliances.

But however patriotic and meritorious these resolves were, they simply gave to the North Carolina delegates the power, if they thought proper to exercise it, to concur in a measure which might or might not be brought forward by others; while the resolutions of Virginia imposed upon her representatives the obligation to propose that measure unconditionally, and to take, in her name, all the responsibility of a courageous and unhesitating lead in the cause of freedom.

In obedience to these instructions, the delegates from Virginia, in the general Congress upon 7th June, 1776, brought forward in that body a resolution declaring "that these United Colonies are, and of right *ought to be*, free and independent states; that they are absolved from all allegiance to the British Crown, and that all political connection between them and the state of Great Britain is, and ought to be, totally dissolved."

This resolution was, as it is well known, debated in Congress on the 8th and 10th of June, on the last of which days it was referred, without a vote, to a select committee, charged with the duty of "preparing a declaration to effectuate the said resolution."

It had been hoped that a delay of a few weeks would silence the opposition which the resolution had encountered, hence its postponement to July 1. Upon that day and the following, the debate was renewed. The resolution as proposed by the delegates of Virginia, in pursuance of their

instructions from the Virginia convention, was then formally adopted by the House; and two days later the memorable declaration prepared by Thomas Jefferson, proclaiming to the world the birth of a Republic in America, received in the bosom of Congress its last sanction, by the individual and responsible signatures of the delegates of the several colonies. (Journal old Congress, vol. i. pp. 368, 369, 392-396. Jefferson's Writings, vol. i. pp. 10-16, 96-100.)

But the work of this Virginia convention of 1776 did not end with this great achievement in support of the independence of America. Upon the same day, and with the same unanimity with which that body adopted the eventful instructions to their delegates in Congress, the convention resolved with like unanimity, says the historian, "that a committee be appointed to prepare a Declaration of Rights, and such a plan of government as will be most likely to maintain peace and order in this Colony, and secure substantial and equal liberty to the people."

The committee intrusted with this great work, consisted of twenty-eight members. They embraced the most eminent and distinguished representative men of the convention: George Mason, Archibald Cary, Patrick Henry, Richard Bland, Merriwether Smith, Robert Carter Nicholas, and others, who, if less known to fame, had nevertheless given solid proof of practical wisdom and capacity for government.

On the day after the appointment of the committee, James Madison, then but twenty-five years old, serving his first term in any deliberative body, was added by special motion to that committee. One day later, George Mason, destined to be the master spirit of the committee, who was absent from sickness when the committee was formed, was likewise made a member of it.

The grandeur and difficulty of the trust confided to this committee was only commensurate with its dignity and

importance. The first written constitution for a sovereign and independent state, which the history of the world had yet evoked, was now to be formed and adjusted to the new and untried circumstances of American freedom. The Declaration of Rights was, with a few amendments, the work of George Mason, and was unanimously adopted by the convention. It is a massive and undying monument of American liberty. In it are found "a condensed, logical, and luminous summary of the great principles of freedom inherited by us from our British ancestry; the extracted essence of Magna Charta, Petition of Right, the acts of the Long Parliament, and the doctrines of the Revolution of 1688, as expounded by Locke, distilled and concentrated in the alembic of George Mason's powerful and discriminating mind." It has stood the rude test of every vicissitude, and yet stands, "*sans peur, sans reproche*," without the change of a letter, at the head of every constitution of Virginia adopted since that time, however difficult it may be to reconcile with its eternal principles some of the extravaganzas of the more modern plan of government adopted in recent years by that honored old commonwealth.

Its enunciated truths have found places in the constitutional acts of many of the other states, as well as in those amendments of the Constitution of the United States which were deemed by the first Congress indispensable to complete the fabric of American liberty and union.

The original draft of the Declaration of Rights, in Mr. Mason's own handwriting, is sacredly enshrined, as it deserves to be, in the public library of the old commonwealth at Richmond. By a comparison with this original draft and the copy reported by the committee, and found among the papers of Mr. Madison, the few verbal alterations made by the committee from Mr. Mason's draft are at once perceptible.

There was one amendment made by the convention which it is proper to notice, not less from its own intrinsic importance of the principle involved, than from the connection of Mr. Madison with it.

The last article of Colonel Mason's draft related to religious freedom, declaring that religion, or the duty which we owe to our Creator, and the manner of discharging it, can be directed by reason and conviction, not by force and violence; and hence, "that all men should enjoy the fullest toleration in the exercise of religion, according to the dictates of conscience, unpunished and unrestrained by the magistrate, unless under color of religion any man disturb the peace, the happiness, or the safety of society."

To Mr. Madison's discriminating mind there seemed to be a dangerous and illogical implication in the use of the word "toleration," as well as in the clause which admitted the restraining and punitive interposition of the civil magistrate in cases where the peace of society might be supposed to be endangered.

Toleration is not the opposite of intolerance, but is the counterfeit of it. Both are despotisms. The one assumes to itself the right of withholding liberty of conscience; the other, of granting it. Toleration belonged to a system in which there was an Established Church, and where a certain liberty of conscience is granted, not of right, but of grace, to dissenting denominations; and the exception to this granted liberty, in cases where the peace of society might be alleged to be in danger of being disturbed, was one which, in the hands of the dominant power, might easily be so construed as to impair, if not annul, the grant.

Mr. Madison, modest and young as he was, felt constrained, therefore, to offer an amendment; and instead of affirming that "all men should enjoy the fullest toleration in the exercise of religion," etc., proposed to insert in lieu thereof, "the

inherent and indefeasible right, by nature, to freedom of religion, declaring that all men are equally entitled to the full and free exercise of it, according to the dictates of conscience." Thus closing the door against an abusive exercise of the authority of the civil magistrate under the clause of exception in Colonel Mason's draft, it added, "No man or class of men ought, on account of religion, to be invested with peculiar emoluments or privileges, nor subjected to any penalties or disabilities, unless, under color of religion, the preservation of equal liberty and the existence of the state are manifestly endangered."

The amendment of Mr. Madison prevailed, and thus early were his wisdom and vigilant love of liberty incorporated with one of the noblest and most enduring monuments of American freedom and constitutional law.

Upon June 29th, 1776, the first written constitution of Virginia was unanimously adopted. It is, and forever will remain, a lasting monument of the wisdom of those who framed it. The striking proof of its excellence is found in the fact that it stood for fifty-four years against assault and amendment from all quarters, in an age of change and innovation, but was superseded in 1829 by a new organic law, which since that period has given place to two or three others.

In the language of a distinguished Virginian, "There is hardly now a thinking man of any party in Virginia, who would not gladly exchange the modern structure, with all its novel and imaginary improvements, for that old constitution of 1776, just as it was, with only a necessary readjustment of representation to the changes which have taken place in the local distribution of the population."

The legislative assembly of Virginia under the new constitution, met for the first time in Williamsburg, on the 7th day of October, 1776. It met in an hour which

"tried men's souls." The tide of fortune was beginning to ebb, and the disastrous battle of Long Island, and the expulsion of the American army from the city of New York, by the overwhelming superiority of England's forces concentrated there, was the beginning of that mournful succession of reverses which tried to the uttermost alike the faith and patience of the peerless Washington and his fearless followers.

Mr. Jefferson, who had shortly before resigned his seat in the Continental Congress, the laurels still fresh which encircled his brow, as the author of the Declaration of Independence, now took his seat in the House of Delegates as the member from the county of Albemarle, while Mr. Madison was a delegate in the same body from the county of Orange.

In this memorable convocation these two patriots met for the first time; and then commenced that close fellowship of half a century, which afterwards subsisted between them, never dimmed by a shade of jealousy, or disturbed by a moment's alienation, though admitting the utmost freedom, and sometimes diversity of opinion, in their close fraternal relations with each other, as we shall have occasion to see, which forms a rare example of generous and elevated friendship, amid the contentions and vicissitudes of public life, that does honor to human nature.

The General Assembly of 1776, of which Mr. Jefferson was the acknowledged leader, was signalized by the act for the abolition of entails: the repeal of all laws which restrained by penal enactments the freedom of religious opinion or worship: the act to exempt dissenters from taxes or contributions for the support of the Established Church; and to dispense with any future promise for the support of ministers, reserving to the present incumbents of parishes the arrears of salaries actually due to them,

and their congregations the use and enjoyment of existing glebes, churches, and chapels, with their appendages. (Journal of House of Delegates, October Session, 1776, pp. 62, 63.)

In the advocacy of all these measures, Mr. Madison yielded his earnest and cordial support. His youth, combined with an extreme and innate modesty, restrained him from taking that prominent part in the discussion of them which talent and acquirement so well fitted him.

Mr. Madison was not returned to the succeeding General Assembly of Virginia, which then met semi-annually. He was defeated at the April election, 1777, in the county of Orange, by an influence unfortunately not uncommon in that day, and which, I mourn to say, prevails, I fear, to a much greater and more pernicious extent at this—the practice of treating at elections. This influence was known and prevailed in England, despite their penal prohibitory enactments, and became transplanted with the early representative institutions, which it tended to vitiate and corrupt, to the virgin soil of the New World.

Mr. Madison preferred, in that early hour of his promotion, to become a victim to the Spartan inflexibility of his principles, rather than yield one vote to this sad species of electioneering, believing, to use his own words, that “the reputation and success of representative government depended on the purity of popular elections.” The nobility and self-respect of such a statesman, justly elevated him far above the mortification of so undeserved and temporary a defeat. His retirement was of short duration. He was chosen by the joint ballot of the General Assembly of Virginia in 1777, to which he failed to be returned, a member of the Council of State—a body of eight men, created by the new constitution, whose duty was to participate with the governor in the exercise of all the executive

powers of the government, and without whose "advice," he could perform no official act.

The high functions of this office demanded, in the earlier days of Virginia, that none save such as were distinguished for patriotism, talent, and influence should be chosen councilor of state.

It was a just compliment to the unambitious and youthful Virginian, and a flattering proof of the high estimate entertained for him by the General Assembly, to have been nominated and elected to this position of responsibility, without his wish or knowledge.

Virginia's council chamber became another theatre for useful and patriotic labor on the part of young Madison to his native state. Here he acquired the habit of self-possession in the enunciation of his views, which was alone wanting to make him as lucid and powerful in debate as he was clear and profound in thought, and copious and overflowing in information. It was this service of Mr. Madison as councilor of state, with his associates, the Pages, the Blairs, the Harrisons, the Walkers, and the Marshalls, that prepared and trained him for the highest and most enduring triumphs of his after life. In this position he soon commended himself to the confidence of Patrick Henry, who was then serving his second year as the first governor of Virginia under the new constitution.

Governor Henry's known aversion to the labors of the pen, and Mr. Madison's known skill and facility as a writer, rendered the aid of the latter of incalculable value in the preparation of executive state papers, not less than in his foreign correspondence. Mr. Madison was the only member of the Executive Council at that time versed in foreign languages, and the number of foreign officers then in the army, especially in Virginia, who were in constant communication with the Executive, enabled him to render invaluable ser-

vice to the state. Mr. Jefferson succeeded Mr. Henry as governor. Mr. Madison continued to remain as councilor of state long enough to render much invaluable aid.

Upon December 14, 1779, at the age of twenty-eight, he was chosen by the General Assembly of Virginia one of the delegates to represent the commonwealth in the Congress of the Confederation. Mr. Madison took his seat in that body on March 28, 1780.

The brilliant and distinguished part performed by him in the Congress of the Confederation can never be overestimated. Let him speak as to the aspect of public affairs when he entered that body. I quote from a letter written to Mr. Jefferson, then governor of Virginia, dated March 27, 1781, only six days after he had taken his seat:

"Among the various conjectures of alarm and distress which have arisen in the course of the Revolution, it is with pain I affirm to you that no one can be singled out more truly critical than the present: our army threatened with an immediate alternative of disbanding or living on free quarters; the public treasury empty; public credit exhausted; nay, the private credit of purchasing-agents employed, I am told, as far as it will bear; Congress complaining of the extortion of the people, the people of the improvidence of Congress, and the army of both; our affairs requiring the most mature and systematic measures, and the urgency of occasions admitting only of temporizing expedients, and these expedients generating new difficulties; Congress recommending plans to the several states for execution, and the states separately rejudging the expediency of such plans, whereby the same distrust of concurrent exertions that has dampened the ardor of patriotic individuals, must produce the same effect among the states themselves; an old system of finance discarded as incompetent to our necessities, an untried and precarious one substituted, and a total stagna-

tion in prospect between the end of the former and the operation of the latter. These are the outlines of the picture of our public situation. I leave it to your own imagination to fill them up. Believe me, sir, as things now stand, if the states do not vigorously proceed in collecting the old money, and establishing funds for the credit of the new, we are undone; and let them be ever so expeditious in doing this, still the intermediate distress to our army and hindrance to public affairs are a subject of melancholy reflection."

Upon April 3, 1780, the commander-in-chief, moved by the alarming condition of public affairs, addressed a letter to the President of Congress, as follows:

"I think it my duty to touch upon the general situation of the army at this juncture. It is absolutely necessary that Congress should be apprised of it, for it is difficult to see what may be the result; and as very serious consequences are to be apprehended, I should not be justified in preserving silence. There never has been a stage of the war in which the dissatisfaction has been so general and alarming. It has lately, in particular instances, worn features of a very dangerous complexion."

No problems more complex or arduous were ever presented for solution than those which the war of the Revolution originated. Mr. Madison entered Congress, as we have seen, at the moment when the system of paper credit, by which the war had been hitherto supported, experienced a sudden and fearful collapse, and when it became imperiously necessary to provide other financial resources, both at home and abroad. New and most important relations with the powers of Europe were also thus inaugurated, not only by the alliance of France, but by the successive mediations offered for the re-establishment of peace, and especially in the negotiations with Spain, who demanded, as the price

of her support, the surrender of the Mississippi River and of the Western country.

In the solution of all these great and difficult questions, Mr. Madison took a prominent and distinguished part. His impregnable argument for the free navigation of the Mississippi River, in 1781, when South Carolina, Georgia, and even Virginia, hoping to conciliate Spain to the Revolutionary cause, were willing to instruct our minister, Mr. Jay, in his pending negotiations abroad, to yield up their claim, will live as long as time lasts. Mr. Madison based the claim of the colonies to the free navigation of the Mississippi River, first under the 7th clause of the Treaty of Paris, whereby that right was guaranteed to England and her subjects, which subjects the American colonies then were; second, upon the great fundamental principle of the Law of Nations, which forbade Spain, being, under the cession from France, in possession of both banks of the Mississippi, at or near its mouth, from obstructing the free navigation of the same to the inhabitants of *the country above*.

Such an assumption, he insisted, would authorize a nation disposed to take advantage of circumstances, to contravene the clear indications of Nature and Providence and the general good of mankind. If the Law of Nations authorized an innocent passage, even with troops, through the territory of a foreign power, how much more might a passage by water be claimed for commerce, which is beneficial to all nations.

Mr. Madison entered Congress with no ambition to become a leader; but his just and elevated spirit, his disciplined statesmanship, superior knowledge, well balanced, cool judgment, soon placed him at the head of the most important committees, and, though but thirty years of age, yielded to him great prominence in a body composed of

such men as Samuel Adams, Gerry, Wilson, Peters, Witherspoon, Ellsworth, Sherman, Alexander Hamilton, Livingston, Rutledge, Randolph, Middleton, Patterson, and Lee.

By the law of Virginia, at the period of Mr. Madison's election to the Congress of the Confederation in 1779, the term of service was limited to three years, and his term expired in 1782. But the General Assembly of Virginia paid him the high compliment of repealing the act which rendered him ineligible, and he was chosen a fourth term of consecutive service in the Continental Congress.

Congress, on October 24, 1781, received official information of the capitulation, from a letter from the commander-in-chief; and went on the same day at two o'clock, in procession, to the Dutch Lutheran Church, "to return thanks to Almighty God for crowning the allied armies of the United States and France with success, by the surrender of the whole British army under Earl Cornwallis."

It was further resolved, "That the United States, in Congress assembled, will cause to be erected at Yorktown, in Virginia, a marble column adorned with emblems of the alliance between the United States and his most Christian Majesty, and inscribed with a succinct narrative of the great event, which must render that spot forever memorable in the pages of history."

More than a hundred years have elapsed since the surrender of Yorktown; all the officers and men, both foreigners and natives, who took part in that august and glorious event, and to whose valor its success is attributable, have long since passed away;

"Their spirits wrap the dusky mountain;
Their spirits sparkle o'er the fountain;
The meanest rill, the mightiest river,
Goes mingling with their fame forever;"

but no *marble shaft* yet marks that consecrated spot. That

solemn pledge of national faith remains as yet unfulfilled. But the United States has not repudiated that obligation. Already, under a resolution of Congress, the long delayed work has been inaugurated. But a few more years are destined to witness the fulfillment of the country's pledge, by the completion of an appropriate shaft upon the spot of Great Britain's eventful capitulation to the army of her American colonies. Yorktown, like Bunker Hill, will each lift up their respective tokens in commemoration alike of the beginning and of the close of our revolutionary struggle for liberty.

I pass over all the negotiations for peace: the various commissioners sent abroad, and the continued attempts of England to debauch the United States from an alliance with France, and their persistent efforts, by every species of diplomacy and venality, to make a peace unworthy of the gallantry, patriotism, and freedom of the United States. Every effort found an implacable foe in the person of James Madison. To all these efforts he replied, in words which should be always perpetuated: "Our business is plain: fidelity to our allies, and vigor in military preparations—these, and these alone, will secure us against all political devices." (*Madison's Debates and Correspondence*, vol. i. p. 125.)

Nor have I time to dwell on the difficulty of adjusting the questions of compensation to the army—their half pay for life, after the adoption of the provisional articles of peace, and Mr. Madison's prominence in their adjustment.

Upon September 3, 1783, the definite and final treaty of peace was agreed upon, executed, and interchanged at Paris, and the protracted conflict of arms between the mother country, England, and her colonies was celebrated by Congress in a parting address, containing a high and justly wrought tribute to the civic as well as the military virtues of the defenders of American freedom, as well as by a public

thanksgiving to Almighty God for his mercy in vouchsafing so auspicious a victory to the colonial army, in a contest so unequal, and amid such trials, perils, and difficulties.

This was the closing scene of Mr. Madison's service in the Congress of the Confederation, where for four years he had rendered such able and unceasing service to his native state. At the close of his congressional career, Mr. Madison returned to his paternal home in December, 1783. Here he commenced the study of the law.

In writing to Edmund Randolph, March 10, 1784, Mr. Madison says: "Coke, Littleton, and a few others from the same shelf, have been my chief society during the winter." And in a letter to Lafayette, of March 20, 1785, he sportingly alludes to his law studies as follows: "I have nothing to say of myself, except that I have exchanged Richmond for Orange, and spend the chief of my time in reading, and the chief of my reading on law." His legal studies, although interrupted by the public duties which again devolved upon him, were nevertheless pursued with vigilance. Mr. Madison did nothing by halves. He was thorough and accurate in everything. While he never practised law, upon several occasions he gave signal proof of his accurate and thorough attainments in the law, one of which I cite as an apposite illustration.

Mr. Jefferson and Mr. Madison were both members of a board of commissioners appointed by the legislature of Virginia in 1818 to select a proper location for the University of Virginia. This board consisted of twenty-one members, including some of the most erudite and distinguished jurists and lawyers of the commonwealth. Of the first were judges Spencer Roane and William H. Cabell, of the Court of Appeals; judges Brockenbrough, Dade, Stewart, and Holmes, of the General Court; together with Chancellor Taylor. Of the latter, Philip C. Pendleton, James Madison,

General Breckenridge, and John G. Jackson, and others equally learned.

Among the considerations presented to influence the choice of the commissioners in their selection was an offer by Rockbridge County of a very valuable body of land in the neighborhood of Lexington, Virginia, for which a deed was tendered. The deed passed through the examination of the judges and lawyers without criticism. When Mr. Madison came to examine it, he suggested a doubt, founded upon some rather recondite doctrine of contingent remainders of real estate, whether the deed was absolutely valid in law. The defect was finally recognized by the board to be fatal to the validity of the deed, and it was so represented by the commissioners in their report to the Legislature, and the offer declined.

In the month of April, 1784, he was summoned from his retirement, again to enter the public service as a delegate from the county of Orange to the House of Delegates.

That session of the General Assembly of Virginia was the first since the close of the Revolutionary War, and the first since the resignation of George Washington as commander-in-chief of the American army. The old commonwealth was, through her chosen representatives, prompt to acknowledge the debt of gratitude so justly due to her peerless and illustrious son. A committee was appointed at an early day of the session, of which Mr. Madison was a member, to draw up an address, and to report what further measures might be necessary for perpetuating the gratitude and veneration of his country. An address was agreed on, and a resolution for the erection of a statue of Washington of the finest marble. Many before me have doubtless seen that grand *chef-d'œuvre* of Houdon in the Capitol at Richmond, and a copy of which is now in the federal Capitol at Washington. Mr. Jefferson employed the artist, and superintended in

Paris the completion of the work. Mr. Madison wrote the inscription which the statue bore:

"The General Assembly of Virginia have caused this statue to be erected as a monument of affection and gratitude to George Washington, who, uniting to the endowments of the hero the virtues of the patriot, and exerting both in establishing the liberties of his country, has rendered his name dear to his fellow-citizens, and given to the world an immortal example of true glory."

How simple, how true, how appropriate! worthy to go down, like the fame of its immortal subject, to the latest generation!

It was proposed by Houdon, on his return to France, to exchange that faithful inscription (which the sculptor could not appreciate), for the following: "Behold, reader, the form of George Washington. For his worth, ask history; that will tell it, when this stone shall have yielded to the decays of time. His country erects this monument. *Houdon makes it.*"

It may create wonder in an association like this, to hear that Mr. Jefferson himself, so profound a scholar, and so clear and strong a writer, could have assented to this proposed jejune and pompous description in lieu of the one which the statue bears. But the modesty of Mr. Madison, in replying to Mr. Jefferson's letter making this suggestion, is strongly characteristic of the man. "I am sensible of the inferiority in every respect of the original inscription to the proposed substitute, but I am apprehensive that no change can *now* be effected." (Manuscript letter to Mr. Jefferson, May 12, 1786, vol. i. of Rive's *Life of Madison*, 573).

I pause a moment briefly, to notice Mr. Madison's heroic defense of religious freedom in that session of the Virginia General Assembly. How strong his opposition to the general assessment for the support of the teachers of the

Christian religion can never be forgotten. Although that measure was sanctioned by Patrick Henry, John Marshall, and other distinguished men with whom Mr. Madison had almost constantly acted, he stood up bravely and manfully against the passage of the bill authorizing the tax reported in the session of 1784, and after its passage through several stages of its parliamentary progress, and had been ordered to be engrossed.

Its third reading was finally postponed to the next meeting of the legislature, which was to take place in the month of October of the same year. Copies of the bill, with the ayes and noes on the question of postponement, were ordered to be sent to every county, and the people were requested to signify their sense respecting its adoption to the General Assembly. Mr. Madison then put forth his celebrated memorial and remonstrance against the bill.

When the General Assembly met, the assessment was abandoned without a struggle. To Mr. Madison, of all the men of his age, posterity, says his gifted biographer, Mr. Rives, will award the meed of pre-eminence for long, earnest, persevering, and efficient exertions in defense of one of the most precious rights of human nature, the basis of every other, and the indispensable guarantee of civil and political liberty. His memorial and remonstrance, as a triumphant plea in that great cause, was never surpassed in power or eloquence by *any* its stirring interests had called forth: and as a monument of the genius, ability, and love of liberty of the author, which, if he had left no other behind him, would suffice to transmit his name with honor to future ages, and ought to render it forever dear to his country." (First volume of *Rive's Life of Madison*, pp. 633, 634.)

But the time was now rapidly approaching for a closer bond of Union between the states. The Articles of Confederation had failed of their end. Their utter inefficiency,

in the hour of danger and difficulty, to enable the government to raise revenue, or to enforce a compliance by the states with the requisitions of Congress upon them for the support of the government; the inundation of an irredeemable paper currency, and the utter want of credit which had threatened the success of the army, had deeply impressed Mr. Madison with the necessity of some fundamental change in the existing federal government of the states.

Virginia, by a resolution of the General Assembly in 1785, inviting commissioners from all the states to meet at Annapolis in 1786, to consider the trade of the United States, and to effect a uniform system of commercial regulations, as essential to their common interest and prosperity. Six states responded to this call. Mr. Madison and Colonel Hamilton, of New York, were among the leading spirits who assembled at Annapolis in September, 1786, in answer to that call. They were charged with the duty of preparing the report of the conference recommending the states to call a convention at Philadelphia on the second Monday in May, 1787, to be composed of commissioners to be appointed by them, who should consider the public condition of the colonies, and the expediency of certain alterations in the existing form of confederation, and to devise such a system of government, deemed by them adequate to the exigencies of the Union.

The convention was to report an act agreed on by them to legislatures of the states, and thence to the Congress of the Confederation.

Virginia led off in the approval of the proposed plan, and on December 4, 1786, the legislature elected George Washington, Patrick Henry, Edmund Randolph, John Blair, James Madison, George Mason, and George Wythe, seven of her most illustrious men, as commissioners to

represent that commonwealth in the proposed convention. Patrick Henry declined to act; and Governor Randolph, upon whom the power of filling vacancies had devolved, after tendering the position to Thomas Nelson and Richard Henry Lee, both of whom declined, appointed Dr. James McClurg, a distinguished physician in Richmond, and the father-in-law of John Wickham, one of the eminent counsel who defended Aaron Burr, and of whom Mr. Littleton Waller Tazewell, Virginia's great senator and jurist for so many years, is reported to have said, "John Wickham is the wisest man I ever knew, and the ablest lawyer, in my judgment, that ever addressed a court of last resort in the Old World or in the New."

Other states followed in selecting their most eminent and gifted men as commissioners to the convention.

Of all the statesmen America has produced, no one had so thoroughly studied the nature and extent of the governmental reforms demanded by the necessity of the times, and who so fully comprehended that form of constitutional government suited to the popular emergency, as James Madison. No statesman had perceived so early, or felt so deeply, the necessity of increased strength, as essential to the unity and harmony of a permanent union among the states. When the convention assembled in May, 1787, Mr. Madison was fully prepared for the august responsibilities which the discussion of its object was likely to invoke.

I shall not stop to follow the convention through the exciting debates which marked its labors. It sat with closed doors. Mr. Madison was one of its master spirits. He kept a copy of the debates. It was clearly his purpose, when he entered the convention, to keep a report of the whole proceedings of the body. He chose a position which best enabled him to do so. He was not absent a single day

from the sittings of the convention, and certainly no single member was more prominently connected with it than himself. Whether we look to his work in the convention before the Constitution was agreed to, or to his power and influence in the Virginia convention of 1778, called to pass upon the ratification of that instrument, where for days and weeks he met face to face in open debate Patrick Henry, George Mason, and James Monroe, and other great leaders in their unexampled effort for its defeat, he proved himself one of the leaders in both bodies.

A letter written in 1857 by a gentleman in Virginia, then in his ninetieth year, the only surviving witness of that memorial contest in the Virginia convention of '88, I cannot forbear reproducing. He says: "The impressions made by the powerful argument of Madison and the overwhelming argument of Henry, can never fade from my mind. I thought them almost supernatural. They seemed raised up by Providence, each in his way to produce great results: the one, by his grave, dignified, and irresistible arguments, to convince and enlighten mankind; the other, by his brilliant and enrapturing eloquence, to lead whithersoever he would, although there were other brilliant stars in the convention, such as Pendleton, Wythe, Mason. The discussion, after a few days, was narrowed down very much to Mr. Henry and Mr. Madison. They were both at all times quiet and interesting; but the convention yielded gradually to the convincing arguments of Madison, and adopted the Constitution. These two eminent men seemed ever deeply impressed with the magnitude of the issues before them, and each to labor with his whole strength and energy for the object he had in view—the one the adoption, the other the rejection, of the Constitution."

Mr. Madison has been called the Father of the Constitution, and Mr. Jefferson said he was justly entitled to that

distinction. I pass over his authorship in conjunction with Hamilton and Jay, of the *Federalist*, the only criticism upon the ability of which was that it concealed perhaps the defects of the Constitution.

The House of Representatives met for the first time under the Constitution of the United States in the city of New York, and elected its speaker on April 1, 1789. Mr. Madison was sent as a member to that body, and continued to represent his native state therein continuously until 1797. Here his career as a statesman became still more brilliant. The recorded votes and debates of those times show his power and efficiency in every important measure of the new Congress. The necessary organization of the government, the creation and arrangement of the judiciary and the revenue, engaged his clear and discriminating intellect. The legislative history of the government for the first years after the adoption of the Constitution is full of instruction and interest. It brings in strong contrasts the mischiefs intended to be remedied by the Constitution, and the provisions deemed by its founders essential to remedy these evils. My time does not permit me to dwell upon them.

In 1798, Mr. Madison was again returned from the county of Orange to the General Assembly of Virginia. Mr. John Adams was the President, and Mr. Jefferson Vice-President of the United States. The passage of the alien and sedition laws, and the claims of the administration for unlicensed power, alarmed Mr. Jefferson, Mr. Madison, and other prominent members of the Republican party. Such claims of power, if carried out, would, as they believed, lead to an extinction of the reserved rights of the states, and ultimately lead to a consolidated and centralized government, and which, if acquiesced in, would leave no limit to federal power. It was then that Virginia uttered her ringing protest against such claims, in the resolutions of '98, prepared

by Mr. Madison; and when rejected by Northern and Eastern states, was re-asserted in his memorable Report of 1799.

The cardinal political truths inserted in those memorable state resolves against the usurpation of the federal government of powers not clearly granted by the Constitution, or clearly essential to the execution of some power expressly delegated by that instrument, triumphed in the election of Mr. Jefferson to the presidency in 1801. For two successive terms of his administration Mr. Madison became his secretary of state.

Mr. Madison's correspondence, while secretary of state, with foreign ambassadors and our ministers at foreign courts, constituted a brilliant and important part of the history of Mr. Jefferson's administration, upon which I have no time to dwell. General Washington had tendered to Mr. Madison the position of secretary of state, at that time vacant. Mr. Madison had become so prominently identified with the Republican party that he felt, notwithstanding his respect for President Washington, that he could not harmoniously co-operate with the majority of his cabinet, and therefore declined it. He sympathized with Mr. Jefferson, not only in his general views of a strict construction of the powers conferred by the Constitution, but in his views of foreign policy, advocating with all his ability a retaliatory policy towards Great Britain. Indeed, when President Washington was about to retire from his second term, 1797, it was the wish of many that Mr. Madison should become the presidential candidate of the Republican party. Mr. Jefferson, in advocating it, thus wrote: "There is not another person in the United States with whom, being placed at the helm of our affairs, my mind would be so completely at rest for the future of our political bark." But Mr. Madison, with that self-subdued respect and modesty which ever marked his life, would not consent.

In 1797 he retired from Congress, not, however, until he had captured and won a dashing young widow, of remarkable accomplishments and powers of fascination, whom he had met in New York, the relict of Mr. Todd, a promising lawyer in Philadelphia. Mrs. Madison's maiden name was Dolly Payne. Some time after the death of Mr. Todd, this lovely and attractive woman went to New York during the session of Congress, was surrounded by admirers, and among them Mr. Madison. He won the prize, and was married in 1794, then forty-three years old.

Mr. Madison succeeded Mr. Jefferson as President for two successive terms. He assumed the responsibilities of his high office at a period of great domestic and foreign trouble. The bitter rumor between the Federal and Republican parties was then at its height. With a few exceptions, the great mass of the talent of New England was Federal.

The passage of the embargo in 1804, under Mr. Jefferson's administration; the acquisition of Louisiana; the rapidly growing population, power, and influence in the West; the slave representation in the South; and the supposed partiality of Mr. Jefferson and his secretary of state (Mr. Madison) for France, all intensified the Federal hate against Mr. Jefferson and his measures.

Despite the bitter opposition of the Federal party to Mr. Jefferson's administration, it had, with the exception of the injuries sustained by the country from the injustice of foreign powers, been more successful and prosperous, and more satisfactory to the people, than that of either of his predecessors.

Many of its acts, which the Hartford convention considered aggravated offenses, were by a majority of the people considered as its principal merit. But when Mr. Madison assumed the presidential office, the government

was embarrassed not only by domestic party bitterness, but by continued foreign wrongs. The act of non-intercourse against England was still in force. The right of search and impressment, insolently claimed and asserted by Great Britain, kindled into war, formally declared on June 18, 1812.

That contest was a stern trial of the patriotism, institutions, and government of the country. For years England, arrogant in her assumption to be mistress of the seas, had harrassed and destroyed our commerce, disregarded all rights of neutrality, searched our ships, impressed our sailors, and forced them to fight her battles. Despite New England's opposition to that measure, the *country approved it*.

Mr. Madison was re-elected by a large majority, and on March 4, 1813, was inaugurated for his second term. I have not time to enter into an examination of his administration, nor can I dwell on the incidents of the war. The arrogance of England was again rebuked, her army punished on the plains of Louisiana, and the freedom of the sea placed on a free basis. The Treaty of Ghent was signed in the year 1815, but not known until after the memorable victory of Jackson, on the 8th of January.

Mr. Madison's administration was marked by a calmness, dignity, forbearance, and statesmanship which distinguishes its success in American annals. On March 14, 1817, he surrendered his high responsibility to James Monroe, and retired to the quietude of Montpelier. He was again called by the people of Orange from his retirement, at the advanced age of seventy-eight years, to represent them in the convention of that state, in October, 1829, to revise and remodel the constitution of 1776. It was a fit compliment to the enlightened statesman by those who had known him longest and best, to represent them in the approaching state

convention, to revise a constitution formed fifty-one years before by Jefferson, Lee, Mason, and himself. That convention assembled in the city of Richmond, in October, 1829. Taken collectively, it was, in my judgment, the ablest and most intellectual body of one hundred men that ever assembled for deliberation in the domain of a free commonwealth. I fearlessly appeal to the reported debates of that body published by Ritchie & Cook in 1830, to sustain the fidelity of my statement. It was the privilege of my youth to have witnessed the organization of that august body, and to have been almost a daily attendant upon its debates for many weeks.

James Monroe was nominated by Madison as President of the convention, unanimously elected, and was conducted to the chair by Madison and John Marshall, and returned his thanks in a brief but appropriate address. In addition to two venerable ex-presidents, and the chief justice of the United States, there were Wm. B. Giles, Philip Pendleton Barbour, Chapman Johnson, Benjamin Watkins Leigh, Philip Dodridge, Abel P. Upshur, Briscoe G. Baldwin, Sam Taylor, John Randolph, Philip Norborne Nicholas, Robert Stanard, Alexander Campbell, Richard Morris, John Scott, John W. Green, Thomas R. Joyner, Hugh Blair Grigsby, with many other able representative men, all of whom have long since passed away.

Mr. Madison made several speeches in that body, which are accurately reported in the volume of its debates and proceedings. Mr. Madison never again appeared in public life. He succeeded Mr. Jefferson as rector of the University of Virginia, and gave to that honored institution the benefits of his wisdom, learning, and personal supervision.

Mr. Madison, in the latter years of his life, enjoyed the quietude of his own loved home, engaged in a voluminous correspondence and the bestowal of a boundless hospitality.

He had no children, but Mr. Payne Todd, the son of his wife by her first marriage, lived in his household, and was the recipient of his affectionate generosity.

Mr. Madison passed peacefully away, in the eighty-sixth year of his age, in the full enjoyment of his intellect, at Montpelier, on June 28, 1836, and sleeps by the side of his wife, father, and mother, and other kindred, in the ancestral cemetery of that attractive spot.

Mrs. Madison survived her husband thirteen years. She removed to Washington, where she was the object of great reverence and affection on the part of Congress, the President, the Supreme Court, and the countless host of strangers who annually are drawn to the federal Capitol. This charming and accomplished woman died in Washington. Her remains were removed to Virginia, and laid by the side of her husband.

I have thus attempted an outline of some of the labors incident in the life of this eminent Virginian. I have brought out nothing original in the history of this great and good man, and am indebted to his biographer, the late William C. Rives, for much that I have said. He was a statesman of unrivaled power; a master of every question presented to him for solution; highly accomplished as a scholar; a faultless logician, fluent without volubility; calm, but clear in statement, and as concise as he was clear; he wearied the patience of none, but commanded the attention of all, and so perspicuous as to reach the humblest of his hearers, while he was dealing with the highest problems of law, statesmanship, or diplomacy. He was a man of industry, of method, of patient investigation, of thoughtful study. His integrity was of the purest, and his honor of the loftiest standard. Naturally earnest, he had that dignified self-possession, the fruit of an innate consciousness that he was master of his subject, and believed himself

right in his convictions. He was systematic and thorough in his reading, and consequently he was always prepared. He was never excited, always dignified, and his mind so fully stored with knowledge, that he always commanded attention from all whom he addressed.

Mr. Madison was trained to be a statesman. He gathered from every book he read, thoughts deemed by him worthy of preservation, and made them subjects of profound reflection. He was singularly methodical. He had a place for everything, and everything had a place. He brought to the consideration of every subject submitted to him, the most laborious study, unbiassed by passion, prejudice, or party. But above all, Mr. Madison was a Christian in *theory* and in *practice*. He had been for many long years a communicant in the Protestant Episcopal Church. His moral courage never yielded to the braggart threats of selfish demagogues, and he stood dauntless and unmoved amid all excitements of a popular constituency, when they demanded of him any action inconsistent with his convictions.

In the early days of doubt and trial, when Mr. Madison, as a member of the Continental Congress, sought to obtain for Congress the power of regulating the currency, and getting rid of the load of worthless, irredeemable paper currency under which the country was groaning, and which threatened the loss of the cause of liberty itself, Virginia passed resolves setting out that the grant to Congress to regulate the currency was dangerous to the right of the states, and should not be granted. Mr. Madison, mortified by this legislative reproof of a scheme that he sincerely believed was essential to the success of the pending struggle for freedom, proudly said, "that Virginia was his mother, and that he was ready to listen and to obey her voice, unless it required him to yield up his convictions; and

that he could never do." He stood firm as a rock, and the succeeding legislature repealed the obnoxious resolves, and warmly approved by its action his financial views.

I am aware that Mr. Madison was the object of much obloquy among his political opponents, and sometimes, at perilous periods, of his friends. It has been charged that Mr. Madison's resolution in the Virginia legislature in 1798, growing out of the alien and sedition laws, and his report in 1799, alike by the terms and spirit of said papers, authorized any state, which thought a convention of its people believed that a particular law of Congress was a dangerous and palpable infraction of the Constitution, might interpose, and that the interposition specified was a constitutional right for such state to nullify the unconstitutional enactment or secede constitutionally from the Union.

When South Carolina sought, in 1832, to nullify a revenue enactment of Congress, Mr. Robert Y. Haine, in his celebrated debate with Mr. Webster, claimed that the Virginia resolutions of 1798 and Madison's report of 1799 countenanced and justified constitutional resistance, which Mr. Webster, in his reply, denied. Upon an appeal to Mr. Madison, who was then living, he denied that the construction sought to be put on these state papers *was the true one*.

He published a paper and wrote at the same time to many of his friends stating that the interposition contemplated by those memorable resolutions and report did not and never was intended to justify constitutional nullification or constitutional secession. Mr. Madison, in explanation, stated that there were many ways in which states could interpose against unconstitutional enactments of Congress. They might call a convention of states, and appeal to Congress to repeal the obnoxious law; or they might appeal to the Supreme Court, and invoke its judgment on the validity of

the law. If all remedies failed, and the burden was oppressive, then he acknowledged that there remained the ultimate violent remedy above the Constitution, and in defense of the Constitution, the inalienable right to freedom—the right of revolution. (Letter of Mr. Madison to N. P. Trist, *Writings of James Madison*, vol. iv. 761; letter of James Madison to James Robertson, dated March 27, 1832, vol. iv. of the *Writings of James Madison*, p. 160.)

For the utterance of these sentiments Mr. Madison has been the subject of much obloquy in former days, and was charged with a cowardly surrender of his former principles, by denying the constitutional right of resistance to the states, which he had advocated and avowed in 1798. How unjust all these accusations were, I will not stop to consider. James Madison was too pure, wise, and great a statesman ever to be mistaken as to what the true construction of the Constitution was. He believed that no unconstitutional law of Congress was binding upon the states. He believed that there were constitutional remedies; but he boldly denied that either the Constitution of the United States, or his construction of that instrument, insisted upon in his resolution and report in the Virginia legislature in 1798–99, tolerated a constitutional right on the part of a state to nullify a law or secede from the Union at pleasure. No man ever knew half so well what the Constitution meant as James Madison. He has been designated as the "Father of the Constitution." Mr. Jefferson and Mr. Wythe said he was justly entitled to such paternity. No man felt or knew the necessity for a Constitution, and what power it intended to confer, and did confer, as James Madison. He was eminently and always a strict constructionist. He believed that while the object of the Constitution was to make the people of the United States one people, and to place them under one government, it was for certain specified purposes, not, as is now claimed, for all.

The purpose and object of the Constitution, Mr. Madison insisted, was to make and create a common government; to make war, peace, and treaties; to levy and collect money, regulate commerce; with correspondent executive and judicial authorities to be vested in the government of the United States. In other words, the Constitution created a union of the states, with one government over them, in respect to their relation to foreign states, and the aspect in which the nations were to regard them. But Mr. Madison never believed, as is now so glibly claimed by journals and certain political leaders who favor a strong government, that the Constitution created an amalgamation of the whole people under one government, and therefore was an extinction of the state sovereignties. Such a construction would have been an extinction, not a union, of the states. There was no necessity, therefore, for making the local institutions of the several states approach each other in any closer affinity. As government existed, each within its own territory, for all purposes of territorial supremacy and power—in a word, for all state purposes—it was no matter what variety the states should have in these respects, and it was left to their own discretion. And it was deemed by Madison and other founders of our governmental system, that its great beauty was found in the fact that the federal and state governments were kept thus distinct, state legislation left to the state authorities, and general legislation given to the general government.

These were Mr. Madison's views—no more, no less. His Virginia resolution and report in 1798–99 was to deny the exercise of an authorized federal power; to deny centralization by an absorption of the rights and sovereignty of the states; to defend the integrity of the Constitution, and preserve intact the reserved rights of the states; to maintain the Union by obeying the Constitution in keeping the fed-

eral and state governments each in their respective specified sphere as prescribed by that instrument.

I know how popular in these days it has become in certain quarters to ridicule the reserved rights of the states. I know, too, how centralization is seeking to erect upon the ruin of the states, by a denial of their rights, a central consolidated government upon the ruin of the duplicate form of government formed by our fathers. The enunciations of Mr. Madison should arouse friends of free government, irrespective of party, to a close alliance in the defense of the Constitution and its limitations.

A few words more and I am done. It was my good fortune, in my early youth, to have seen and known Mr. Madison. It may interest my brethren of this Association to hear a few personal reminiscences of this great statesman.

Mr. Madison was rather below medium stature, calm and dignified in his demeanor, with a vein of quiet humor, which relieved his apparent seriousness, and lighted up with an inexpressible charm, in his moments of relaxation, the grave aspects of his character.

His keen sense of the ridiculous, not less than his playful humor, was made manifest in several letters he wrote during his service in Congress, to Mr. Edmund Randolph and others, through whom Mr. Madison carried on his correspondence, with the treasurer of the commonwealth, for his per diem, then fixed at \$8 per day of the specie standard, but not promptly paid.

On August 27, 1782, Mr. Madison writes to his friend: "I cannot in any way make you more sensible of the importance of your kind remittances for me, than by informing you that I have for some time past been a pensioner on the favor of Hayn Solomon, a Jew broker."

Again, on September 24th, he writes: "Your credit with Mr. Cohen, which procured me fifty pounds, with \$200

transmitted by Mr. Ambler (the treasurer), have been of much service; but I am relapsing fast into distress. The case of my brothers is equally alarming."

Again: "The remittance to Colonel Bland is a source of hope to his brethren. I am ashamed to reiterate my wants so incessantly to you, but they begin to be so urgent, that it is impossible to suppress them. The kindness of our little friend on Front street, near the coffee-house, is an advance which will preserve me from extremities; but I never resort to it without great mortification, as he obstinately rejects all recompense. The price of money is so usurious, that he thinks it ought to be extorted from none but those who can use it at profitable speculation. To a necessitous delegate he gratuitously spares a supply of his private stock."

Mr. Madison was stern, yet attractive in the social circle; especially felicitous in his personal reminiscences of prominent men and interesting incidents in his personal life. I remember as though it were yesterday my last interview with this grand old man, in October, 1835. With his velvet cap upon his head, and lying on his lounge in his sitting-room at Montpelier, I went in to bid him good-bye, half an hour before the stage-coach arrived, which was to bear me from my native state in search of a new home in the far West. He took me by the hand, and inquired of me in what part of the West I proposed to locate myself. I told him I had not yet determined. He replied, "I think, my son, your determination is a wise one, to seek a new home in the great West. That great Western empire is ultimately to control the destinies of our country, and it is judicious in you to grow up around the people among whom you expect to love." And then added, "The Western people are patriotic, prosperous, and of noble physical development, and are possessed of strong native judgment.

Especially, is it true, that the Western women are intellectual, handsome, and practical. I must give you, in proof of this, an incident in my early and only visit to a Western state. I was called by business to Ohio, at an early day. We were travelling in a common mail-coach, in extremely cold weather, and, despite of blankets and straw, felt the effects of a freezing atmosphere. About sunrise we stopped at a neat, comfortable country inn, which we were told was the breakfast house. My companions and myself went in, and were met by a cozy and polite landlady, who welcomed us cordially, saying, 'Gentlemen, come in into the fire. You seem all to be very cold. Perhaps you would like to have a Samson before breakfast.' None of us comprehended what a Samson was; but as she connected it, in a remedial sense, with our frigid condition, I replied, 'Yes madam, we will be obliged to you for a Samson.' Quickly looking at us, she replied, 'Will you take your Samson with the hair on, or with the hair off?' Here was a poser, and we were all silent for a second. Remembering that Samson was strong with his hair on, and weak with his hair off, I replied, 'By all means, with the hair on.' In a short time she returned with three strong hot toddies, which we found grateful to our condition, and after an excellent breakfast, left on our travel."

Mr. Madison was warm in his friendships; slow to form them, but when formed, never willing to give them up. No jealousy or envy ever interfered to disturb their harmony. Whenever broken, it was only when compelled to withdraw the confidence in which they rested. As a conversationalist and correspondent he had few superiors. He lived for more than half a century in times of wonderful excitement and danger. He saw the American Republic born amid blood, danger, and doubt. None did more for its formation; few were more active for its success and per-

petuation. His was a pure and chastened ambition. He was the recipient of the loftiest honor which his own commonwealth or the federal government could bestow. All yield to this great man the homage which virtue, talents, purity, and great public service demand. Chief Justice Marshall, towards the close of his life, being asked which of the various public speakers he had heard—and he had heard all the great orators, parliamentary and forensic, in America—he considered the most eloquent, replied: “Eloquence has been defined to be the art of persuasion. If it includes persuasion by convincing, Mr. Madison was the most eloquent man I ever heard.”

Mr. Jefferson, speaking of the peculiar and consummate powers displayed by Mr. Madison as a parliamentary debater, in the Federal Convention, in the Virginia Convention, and in the Congress of the United States, declared him the first of every assembly of which he was a member. (Vol. i. *Jefferson's Works*, 172.)

Mr. Gallatin, who served with him in the House of Representatives of the United States in the important session of 1795–96 and 1796–97, recalling, in the evening of his days, those who had been and were the most eminent in the deliberative assemblies of the country, pronounced Mr. Madison to be, in his judgment, the ablest man that ever sat in the American Congress.

It is my solemn conviction that history will accord to James Madison the highest supremacy in statesmanship which this country has produced.

REPORT

Of the Committee of the Law Association of Philadelphia, appointed December 5, 1882, "To consider the subject of the Delays to Suitors in the Supreme Court of the United States, and the various plans for the Relief of that Court which have been suggested."

To the Law Association of Philadelphia :

Your committee, after many meetings and much discussion, have decided to suggest certain legislation, in support of which they beg leave to offer the following reasons:

Under existing law, every case decided by the Circuit or District Court of the United States, in which the amount involved, exclusive of costs, equals or exceeds the sum of \$5,000, may be taken to the Supreme Court; and patent and copyright cases, cases upon the construction of the civil rights bills, and cases in which the judges of the lower courts will certify that they differ in opinion, and that the point involved is of sufficient importance to require the decision of the Supreme Court, may be taken up irrespective of the amount involved; to this court are also brought all appeals and writs of error from the decisions of the Supreme Court of the District of Columbia, in cases where the amount involved is \$1,000, those from the supreme courts of the territories where the amount involved is \$1,000 or more, except Washington Territory, where the limit is \$2,000, and all appeals from the Court of Claims; in addition to these cases are the appeals from the supreme courts of all the states, irrespective of amount, in certain cases involving the con-

struction of the Constitution, or a law or treaty of the United States; besides all this there is an occasional exercise of original jurisdiction.

It should also be observed that in all cases between \$500 and \$5,000 the decisions of the circuit courts are final.

The mischief resulting from this state of the law is twofold.

1. The Supreme Court has on its calendar at the beginning of each session not less than twelve hundred cases, out of which it can annually hear and decide not more, on an average, than three hundred and sixty; so that since the cases take their position on the calendar in the order in which they go up, every case has about twelve hundred cases ahead of it; and, with an average of three hundred and sixty removed annually, more than three years must elapse before it can be reached for argument. The result is to the suitors, in many cases, a practical denial of justice, and to the country frequently a continually annoying uncertainty and consequent increase of litigation on many points of United States constitutional or statutory law.

2. The second evil resulting from the present state of the law is the inability on the part of suitors in the district and circuit courts, whose cases are under \$5,000, to obtain any real review of the decision of the judge who tries or hears the cause. The trial in the district court is held by the district judge; and if appealable to the circuit court, is nearly always heard before the same judge sitting with the circuit judge, whose opinion is prone to coincide with that of his brother judge, and the latter rarely has the counteracting influence of the opinion of the circuit justice to sustain him in reversing; while in the review of the circuit court decisions, the circuit and district judges sitting together are still less likely to overturn each other's rulings.

To meet these existing evils, two bills or sets of bills were presented for our consideration. We will briefly state what we believe to be the merits and defects of each of the schemes, and show how we have endeavored to combine the merits while omitting the defects of both.

The Davis bill proposes in brief:

1. The appointment of two additional circuit judges in each of the nine judicial circuits.

2. The three circuit judges, with the associate justice of the Supreme Court, allotted to a given circuit, and two of the district judges to be designated by the order of the court at each term, shall constitute a court of appeals for each circuit. This court shall have appellate jurisdiction from the circuit and district courts within the circuit:

(a) Whenever an appeal or writ of error now lies from a final judgment or decree of said courts.

(b) Whenever the amount claimed, or value of the property in controversy exceeds \$500.

(c) Whenever a circuit or district judge shall certify that the action involves a question of general importance.

(d) Whenever, within thirty days, an appeal is taken from an interlocutory decree of the circuit or district court, granting or refusing an injunction, provided an appeal would lie on final decree.

(e) Whenever, within ninety days of the judgment, a writ of error is allowed by a judge of the court of appeals in any criminal case.

The decision of this court of appeals will be final on all questions of fact, and on questions of law, except:

1. Where the value or sum of \$10,000 is in controversy.

2. Where a question upon the construction of the Constitution, a law of the United States, or the validity of a treaty is involved.

3. Where the court certifies that the case involves a legal question of sufficient importance to require the final decision of the Supreme Court.

In the two last-mentioned cases, the specific question only shall be certified to, and finally decided by the Supreme Court; and

4. In patent and copyright cases without regard to amount; *Provided*, That the court shall certify that the question is of sufficient importance to require the decision of the Supreme Court, which may then review both the law and facts.

This bill unquestionably possesses certain decided merits.

First. By the high limit of appeal it effectually cuts off from the Supreme Court a very large proportion of the cases which now reach it, and so relieves it of possibly as much as two-thirds of all its labor.

Second. It provides a competent review, not only for those cases which now reach the Supreme Court, and are thus cut off, but for all of those civil cases between \$500 and \$5,000, and for criminal cases which have now no competent review, and this within easy reach of every suitor.

Third. It secures a review of the judgments of the courts of appeals in all cases over \$10,000, and cases involving the construction of the Constitution, or the construction or validity of a treaty or a law of the United States, and all other cases irrespective of amount, provided the court shall certify their importance; and

Fourth. It is a scheme which, as regards the courts of appeal, admits of indefinite expansion, should it in the future be found necessary.

The defects of the scheme, however, are in our opinion serious.

First. It divides the country into sections, co-terminous with the boundaries of the circuits, and thus creates sources of local influence which are neither the separate states nor the general government, the only two bases of political division recognized in our Constitution and laws.

Second. It creates nine courts, each of which is for the majority of cases before it a final court of appeal, but without the dignity of such a court, and liable, especially in the common law cases, to be affected by local prejudice or influence. The chances for possible increase of litigation, with such conflicting decisions, are obvious.

Third. It will almost double the number of reports of cases other than Supreme Court cases.

The two bills introduced by Mr. Manning, H. R., bills Nos. 865 and 5,939, contemplate the following changes:

Bill No. 865 provides that—

1. The Supreme Court as at present constituted shall be divided at the beginning of each session into three sections, one of them to be presided over by the chief justice, the other two by two assistant chief justices, to be designated by the President.

2. That to each of these sections shall be assigned by the chief justice and the assistant chief justices an equal number of the cases ready for argument, but in such manner that as nearly as may be all equity cases (which includes patent and copyright cases) shall go to one division, common law cases to another, and admiralty, revenue, and all other cases to the third.

3. That each division shall sit by itself to hear arguments, and if all or two-thirds of the justices assigned to a division concur in a judgment, it shall be reported to the full bench, and no review shall of right accrue to either party; but the court may order a case to be heard before them in general session.

4. The whole court shall sit at least once a month, and before it shall be argued all cases involving the Construction of the Constitution or a treaty of the United States, all writs of error from the supreme courts of the states, and such other cases as they may deem it necessary to hear in full session.

5. At the sessions of the whole court, the judgments of the several divisions shall be delivered and entered upon the minutes of the court as the judgments of the Supreme Court.

Bill No. 5,939 provides that—

1. No case shall be originally brought or removed to a circuit court when the sole ground of its jurisdiction is the citizenship of the parties, unless the amount in controversy shall exceed \$10,000.

2. That no cause shall be removed from a state to a circuit court except by a defendant upon the allowance of the circuit court, after argument before it upon a petition for removal alleging prejudice or undue influence in the circuit court.

3. Whenever the amount in controversy in a circuit court is less than \$10,000 the case may, upon petition of either party, be appealed to the highest appellate court of the state for trial on matters of law, which may review and correct the judgment of the circuit court; but a writ of error or appeal from the judgment of the state court may be taken to the Supreme Court of the United States.

The merits of these bills are recognized as follows:

First. The idea of *one* Supreme Court is preserved, with no chance for conflict of decision between courts of final appeal.

Second. The limit of the right of appeal to the Supreme Court remains \$5,000.

Third. A large proportion of the cases which now go to the Supreme Court is effectually cut off, by cutting off the source of supply in the jurisdiction of the circuit courts.

The defects of the system are—

First. That by being thus cut up into sections, the judgments of the Supreme Court will lack the authority of the whole court, and the court itself will lose its dignity as the Supreme Tribunal of the nation; moreover, the judges of the sections other than that before which the argument takes place, will be indifferent to its decisions, and the judgments may thus be unsatisfactory.

Second. If the judges of the Supreme Court conscientiously examine each case, then but very little time is really gained to them, except that secured by cutting off the jurisdiction of the circuit courts.

Third. This scheme provides no review for cases under \$5,000 in amount, which is so greatly needed.

Fourth. There is a possible constitutional objection to the system of sections in the Supreme Court; and—

Fifth. There is objection to fixing the right of being heard in the circuit court, if it should exist at all, at so high a limit as \$10,000; while the system of appealing from the circuit courts to the supreme courts of the states is entirely at variance with the existing theories of our government.

Your committee believe that they have thus fairly stated the two schemes proposed, and the merits and defects of each, as to which the opinion of the bar, as evinced at the meeting of the American Bar Association, is so evenly divided. We have sought to find a scheme by which, if possible, the merits of both of the schemes already proposed might be combined, and the defects of each eliminated; that they have wholly attained this result the committee cannot pretend, but that they have approximately done so, they venture to hope may be demonstrated.

There were three objects to be attained :

1. To cut off the source of supply for appeal cases.
2. To make some logical division of labor for the remaining cases; and—
3. Provide a means of competent review for those cases in the circuit courts under \$5,000, for which no appeal or writ of error now lies.

In order to the consideration of the first two questions, the committee made an examination of the last seven volumes of the United States Supreme Court Reports (vols. 99 to 105 inclusive), and tabulated the various cases in such manner as would best show, so far as it could be determined, the ground upon which each case was brought into that court. The result was as follows. The whole number of cases in the seven volumes is seven hundred and thirty-nine, divided as follows:

Cases from territorial courts,	30
“ “ the Court of Claims,	43
“ “ state courts,	90
“ “ Supreme Court of the District of Columbia,	38
“ by or against national banks,	35
Patent and copyright cases,	49
Land grant cases,	10
Admiralty cases,	29
Tax cases and cases against United States officers,	43
Bankruptcy cases,	20
Cases in which the United States was a party,	31
Cases involving the construction of laws or treaties of the United States,	8
Cases in which the jurisdiction of the circuit court was acquired by citizenship only,	166
Cases in which the ground of jurisdiction did not appear, but presumably it was almost without exception citizenship,	147
	739

Thus it will be seen that the cases in which it is clear that the sole ground of jurisdiction was the citizenship of the parties were 166; allowing a very liberal proportion of the cases marked as those “in which the ground of jurisdiction did not appear.” say 47, as being taken to the Supreme Court on some other ground than that of the citizenship of the parties, there are left 100, which, added to the 166 known to depend on citizenship only, gives us 266 cases out of 739 (an average of 34.5 per cent.), in which the sole ground upon which the Supreme Court is asked to hear them is the citizenship of the parties, while the point involved has nothing to do with United States law of any kind, but depends simply upon the common law of the land, which the state courts are competent to decide, and from whose decision, in other similar cases, no further appeal will lie. The number of citizenship cases which appear affirmatively to have been removed from state courts is only 47, but it is plain to those familiar with the practice of the

courts that the actual proportion must be largely in excess, and that it is being continually increased as the effect of the Removal Act of 1875 becomes more plainly visible. It was thought that here there might be a possible pruning of cases. The law now permits either a plaintiff or defendant to remove a cause solely on the ground of citizenship, but there seems to be no reason why the plaintiff—one who has deliberately selected the state court as his forum—should subsequently be permitted to transfer his case to the United States court. Neither is any good reason apparent why a citizen of the state in whose court the suit is brought, even though he be the defendant, should remove his cause to the United States court, in view of the fact that the sole theoretical ground for doing so is the supposed prejudice existing in the state court in favor of its own citizens. Moreover, the theory of prejudice in the majority of cases is not borne out by the facts, for there is rarely any prejudice on the part of the state court, and on the part of its jury no greater prejudice exists than would be felt by the jury of a federal court, who are always citizens of the same state as that in which the suit is brought; *i. e.*, the state of the court in which the suit originates. In view of this, we have drawn a bill limiting the right of removal, when the sole ground of removal is the citizenship of the parties (except in land cases), to a defendant in the controversy, being also an alien, or a citizen of a state other than that in which the suit is brought; and in order that even such a removal may not be purely capricious, we require an affidavit to be filed stating that such defendant believes that he will be prejudiced by a trial in the state court. This legislation we hope will cut off an appreciable amount of the present business of the circuit courts, and hence that of the Supreme Court, but more particularly will prevent the rapid increase in this direction, which is now inevitable.

The second object to be attained was the removal from the consideration of the Supreme Court of all or any cases which could properly be deflected from it, while at the same time securing a fair and satisfactory appeal. The table of cases showed at once that at least one-third of the cases in the Supreme Court—those depending on citizenship only—were really occupying its time with the consideration of questions which had nothing whatever to do with the law of nations nor the Constitution and laws of the United States, for the settlement of which the Supreme Court of the United States was established. They involve questions of common law, which it has always been deemed that the courts of highest resort in the various states are competent to decide, and they are brought to the Supreme Court simply because there is no other court to which an appeal would lie. Why should not a court of appeal, of equal dignity with the supreme courts of the states, be equally competent to hear and decide such questions? Such a court would secure to a defendant who fears prejudice, all that he could obtain in the courts of his own state, viz., a fair trial by an impartial tribunal, and a review by a court of great dignity, whose jurisdiction is solely an appellate one. There was a practical objection to establishing one new court, that, if it were to hold its sessions in Washington, there would be the loss of one conspicuous merit of the Davis bill—the convenience to suitors. A single court of appeals sitting in Washington seemed to be generally repudiated in the Saratoga discussion. But there seems to be no reason why such a court might not hold its sessions once a year in each of the four great divisions of the Union; and if desirable to increase the number of places hereafter, even this could be done; but wherever it should sit, its decisions would be those of a single undivided court, without local prejudice, for it would recognize no locality save the whole

country. It would not be desirable, however, that such a court should finally pass upon any questions of federal law; and wherever they might arise, the Supreme Court should settle them. Such a court might be a court of *final* appeal for those cases brought before it, but for the constitutional objection that there shall be "one Supreme Court;" and there must be a right of appeal, but the money limit may be fixed so high as practically to secure the advantage sought, while still keeping within the constitutional provision. A bill formulating these ideas is submitted, with the hope that it may be found to embody the merits of the courts of appeal suggested by Mr. Davis, with the uniformity of decision preserved by Mr. Manning.

There remained one important and great benefit secured by the Davis bill not provided for by either of the foregoing suggestions: the review of district and circuit court judgments in cases under \$5,000 in amount. This we have sought to secure by the addition of one circuit judge to each circuit, who can share the labors of the present judge, while time will be secured to both of them to sit with the justice of the Supreme Court, or the judge of a neighboring circuit court, and the district judge as the circuit court *in banc*, in which there will be always at least two new minds to consider the rulings of a single judge.

RICHARD VAUX,
WM. HENRY RAWLE,
HENRY REED,
RICHARD M. CADWALADER,
J. EDWARD CARPENTER,
FRANK P. PRICHARD,
N. DUBOIS MILLER,
Committee.

A Bill to Establish a Court of Appeals, and to provide additional Circuit Court Judges.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled: That there shall be established a court to be called the Court of Appeals of the United States, which shall have appellate jurisdiction, subject to the provisions of this act, of all cases arising in the several circuit courts, where the sole ground of jurisdiction of the said circuit court was that the controversy was one between citizens of different states, or between citizens of the same state, claiming lands under grants of different states, or between a citizen or citizens of a state and a corporation organized under the laws of the United States, or between citizens of a state and foreign states, citizens or subjects. The said Court of Appeals shall consist of one chief justice and six associate justices, to be appointed by the President of the United States, any five of whom shall constitute a quorum. The chief justice, or in his absence the justice present who is senior in office shall preside; between justices whose commissions bear the same date, the precedence shall be determined by lot. In the absence of a quorum, the justice or justices present shall adjourn the court from day to day or without day.

SECTION 2. That such Court of Appeals shall be a Court of Record, shall prescribe the form and device of its seal, and appoint a clerk, removable at its pleasure, to whom the clerks of the several circuit courts shall act as deputies, and each deputy so appointed shall, in case of the death or resignation of the clerk, act as clerk for his own circuit until another clerk shall be appointed. The clerk shall take the oath, and give the bond with sureties prescribed

by law for clerks of district courts. Process shall run in the name of the Court of Appeals of the United States, and shall bear test of the chief justice thereof, or when that office is vacant, of the associate justice next in precedence, and shall be under the seal of the court, and signed by the clerk thereof, or one of his deputies.

SECTION 3. That the marshal of the district in which the Court of Appeals is held, shall attend its sittings and execute its process to him directed, and under the direction of the Attorney General of the United States, and with his approval, provide such rooms as may be necessary, and pay all incidental expenses of said court, including crier, bailiffs, and messengers; *Provided*, That no building or room shall be rented or leased for the use of said court in any city where a building of the United States is situated which can be conveniently used for the purpose; *And provided further*, That no lease of any building or rooms for this purpose shall be valid until approved by the Attorney General; and any such lease shall be subject to be terminated at any time by the Attorney General or by Congress; *And provided further*, That the marshal, crier, bailiffs, and messengers shall be allowed the same compensation for their services respectively as are now allowed for similar services in the circuits in which they are respectively employed, and shall have the like remedies for collecting the same, but shall not receive pay for attending more than one court the same day; nor shall the maximum compensation of the marshal, including all his fees and emoluments, exceed that allowed by existing laws. The salary of the clerk shall be \$6,000 per annum.

SECTION 4. That the appellate jurisdiction of said court shall be exercised on writ of error or appeal, as the nature

of the case may require. No such appeal shall be taken or writ of error sued out except within one year after the entry of the order, decree, or judgment sought to be reviewed: *Provided*, That all citations, writs of error, appeal bonds, or other processes or papers, which under the existing laws of the United States are necessary to be signed or approved by a justice of the Supreme Court or a judge of a circuit court, in order to make effectual an appeal from the circuit court to the Supreme Court of the United States, may, in all writs of error or appeal taken to the Court of Appeals of the United States under this act, be signed or approved by the judge of the circuit court or the justice of the Supreme court assigned thereto, or by a justice of the Court of Appeals. Upon such writ of error or appeal the court shall review such order, judgment, or decree, and may affirm, modify, or reverse the same, or may make such order, or may render such judgment or such decree as the circuit court should have made or rendered, or may order a new trial or other proceedings to be had in that court. Where, upon a hearing in equity in a circuit court, an injunction shall be granted or continued by an interlocutory order or decree, in a cause in which an appeal from a final decree could be taken under the provisions of this act to the Court of Appeals, an appeal may be taken from such interlocutory order or decree granting or continuing such injunction to the Court of Appeals, provided the same is taken within thirty days from the entry of such order or decree. The proceedings in other respects in the court below shall not be stayed during the pendency of such appeal. Upon such appeal, the Court of Appeals may affirm, modify, or reverse such order or decree, and shall direct such proceedings to be had in the court below as the justice of the case may require. The said court shall have power to issue writs of error, mandamus, *scire facias*, *habeas corpus*, and all

other writs which may be necessary or proper to the exercise of its jurisdiction, and agreeable to the principles and usages of law and the practice of the circuit courts of the United States. All provisions of law now in force, prescribing the cases in which appeals may be taken or writs of error sued out for the review by the Supreme Court of the final judgment or decree of the circuit court shall, except as modified by this act, apply to an appeal taken or a writ of error sued out under this section; and the manner of taking such appeal or suing out such writ of error, or of staying proceedings in the inferior court, shall be governed by the laws now in force touching appeals from the circuit court to the Supreme Court, and writs of error from the Supreme Court to the circuit court, subject to the provisions of this section as to the time of taking such appeal or suing out such writ of error. The Court of Appeals may also establish such rules, not inconsistent with law or the rules established by the Supreme Court, as it may deem necessary for the practice of said court.

SECTION 5. That all appeals and writs of error taken, allowed, or sued out upon or from any judgments or decrees of the circuit court, after the day of , 18 , shall be taken, allowed, or sued out under and according to the provisions of this act, so far as it modifies the existing law, and not otherwise.

SECTION 6. That a session of the said Court of Appeals shall be held once in each year in each of the following cities, viz.: in the city of New York, in the city of New Orleans, in the city of Chicago, and in the city of San Francisco. There shall be in each year four terms, to which all writs of error and appeals shall be returnable, viz.: the first Mondays of January, April, July, and October. The court

shall apportion the judicial districts of the United States into four divisions, and may from time to time, in their discretion, change and transfer any district from one division to another. Appeals and writs of error taken in cases decided in districts composing the first division shall be heard at New York; those in cases decided in the second division, at Chicago; those in cases decided in the third division, at New Orleans; and those in cases decided in the fourth division, at San Francisco. The Court of Appeals shall, on the day of 188 , meet in the city of New York, and organize and make such rules for the holding of sessions for hearing cases as shall be most expedient for the dispatch of business and the convenience of suitors.

SECTION 7. That the decision of the Court of Appeals upon questions of fact, shall in all cases be final and conclusive, except as otherwise provided in this section; the facts to be found, if specially requested by either party, but a review upon the law may be had upon writ of error, or appeal in the manner now provided by law to the Supreme Court of the United States, from every final judgment or decree of the Court of Appeals, where the matter in controversy exceeds the sum or value of \$20,000, exclusive of costs, or where the adjudication involves a question arising in the progress of the cause upon the construction of the Constitution, or the construction or validity of a treaty or a law of the United States; but in the last mentioned case the Court of Appeals shall state the question arising upon the construction of the Constitution, or the construction or the validity of such treaty or law, and such question only shall be certified to and finally decided by the Supreme Court; and its decision thereon shall be enforced in like manner as is now provided by law in cases where a question is certified to the Supreme Court, upon which the judges of a

circuit court are divided in opinion. Such writ of error or appeal shall be sued out or taken within one year after the entry of judgment, or the decree sought to be reviewed. The Supreme Court may affirm, modify, or reverse the judgment or decree brought before it for review, or may direct a judgment or decree to be rendered, or such further proceedings to be had as the justice of the case may require. The judgment or decree shall be remitted to the proper circuit court to be enforced according to law. If, within a year after the entry of the judgment or the decree sought to be reversed, any party shall die, the personal representative or heir, as the case may require, may, within one year next after the proof of the will or appointment of the administrator, or within one year next after the death of the ancestor, in the case of an heir, sue out or be made a party to a writ of error, or take an appeal, or be made a party thereto, without reviving the judgment or decree in the court in which the same was entered.

SECTION 8. That in all cases not involving a question upon the construction of the Constitution of the United States, or the construction or validity of a treaty or a law of the United States, a writ of error or appeal may be taken from the Supreme Court of a territory to the Court of Appeals of the United States and to that court only. Appeals taken and writs of error sued out from a decree or a judgment of the Supreme Court of any territory to the Court of Appeals of the United States shall be heard in such divisions as shall be previously designated by general order of the said Court of Appeals.

SECTION 9. That any defendant in a suit at law or equity in any court of the United States may plead or except to the jurisdiction of the court at the same time that he pleads or

answers to the merits, and if said plea or exception be overruled or decided against him, he shall nevertheless be entitled to defend on the merits as if said plea had not been filed or said exception taken.

SECTION 10. That there shall be appointed for the said Court of Appeals, by the President of the United States, by and with the advice and consent of the Senate, one chief justice and six associate justices, who shall have the powers and jurisdiction and shall perform the duties provided for them in this act. The chief justice shall receive a salary of \$8,500 per annum, and each of the justices a salary of \$8,000 per annum. They shall hold office during life or good behavior, and on resignation shall be entitled to their salaries under the conditions provided in Section 714 of the Revised Statutes.

SECTION 11. That any judge who, in pursuance of the provisions of this act, shall attend the Court of Appeals held at any place other than where he resides, shall, upon his written certificate, be paid by the marshal of the district in which the court shall be held, his reasonable expenses for travel and attendance, not to exceed ten dollars per day, and such payment shall be allowed the marshal in the settlement of his accounts with the United States.

SECTION 12. That all writs of error and appeals now pending in the Supreme Court of the United States, which, had this act been in force at the time when such writs of error or appeals were taken, would have been taken to the Court of Appeals and not to the Supreme Court, shall, on the application of counsel for either side, or when reached for hearing on the docket of the Supreme Court, be transferred from the Supreme Court to the Court of Appeals, and shall

be assigned for hearing in whichever of the four divisions shall be designated by the Court of Appeals in accordance with its rules, and shall take their position on the calendar for argument in the order in which they shall be removed to the Court of Appeals.

SECTION 13. That there shall be appointed for each judicial circuit of the United States, by the President of the United States, by and with the advice and consent of the Senate, one additional circuit judge, who shall have the same powers and jurisdiction, and shall perform the same duties, and be entitled to the same compensation as the circuit judge appointed under existing laws.

SECTION 14. That where a final decree or judgment is sought, either upon hearing in equity or upon the adjudication of an issue of law, as in a demurrer or the like, and in every case of writ of error, appeal, exception, motion, rule, or other proceeding at law or in equity designed, as allowed by existing law, to obtain a review of any decree, judgment, finding, or ruling of any judge of the circuit or of the district court, or of any master, auditor, referee, arbitrator, commissioner, or other person exercising judicial or *quasi* judicial functions, the circuit court of every judicial circuit of the United States shall be composed of the justice of the Supreme Court of the United States assigned to such circuit, the two circuit judges thereof, and the district judge in whose district such circuit court may be holding its session. The quorum of such circuit court shall consist of at least three members thereof.

SECTION 15. That when, because of disability, or for any other reason, any one or more of the judges above described shall fail to attend any sitting of such circuit court, his or

their places shall be supplied by one or more circuit judges belonging to the circuits adjacent to the circuit of such circuit court, who shall in every year be designated to the number of four or more for this purpose, and in a certain order, by the Supreme Court of the United States. It shall be the duty of such judge or judges to attend such circuit court upon being notified by the other judges of the latter court of the necessity of their presence to constitute the quorum required by this act.

SECTION 16. That in no case, except rules for new trials or motions for such rules, and rules to take off non-suits, shall the judge, from or to whose decision or ruling an appeal, writ of error, exception, or other proceeding, designed to obtain a review thereof, has been taken, participate in the decision upon such appeal, or other like proceeding.

SECTION 17. That all acts and parts of acts inconsistent herewith are hereby repealed.

A Bill to amend the Act of Congress of March 3, 1875, entitled "An Act to determine the jurisdiction of Circuit Courts of the United States, and to regulate the removal of causes from state courts and for other purposes," and to repeal sections 639 and 640 of the Revised Statutes of the United States.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled: That the second section of the act of Congress, entitled "An Act to determine the jurisdiction of circuit courts of the United

States, and to regulate the removal of causes from state courts, and for other purposes," approved March 3, 1875, be and the same is hereby amended so that the same shall read as follows:

"SECTION 2. That in any suit of a civil nature, at law or in equity, now pending or hereafter brought in any state court, when the matter in dispute exceeds, exclusive of costs, the sum or value of \$500, in which there shall be a controversy between citizens of different states, or a controversy between citizens of the same state, claiming lands under grants of different states; or a controversy between a citizen or citizens of a state and a corporation organized under the laws of the United States; or a controversy between citizens of a state and foreign states, citizens or subjects, the defendant or any one of the defendants in such controversy being an alien or a citizen of another state than that in which the suit is brought, may remove said suit into the Circuit Court of the United States for the proper district; and where the controversy is between citizens of the same state claiming lands under grants of different states, either party may remove said suit into the Circuit Court of the United States for the proper district. And when, in any suit mentioned in this section, there shall be a controversy which is wholly between citizens of different states, and which can be fully determined as between them, then either one or more of the defendants actually interested in such controversy may remove said suit into the Circuit Court of the United States for the proper district; *Provided*, That before or at the time of filing the petition for removal in any of the above cases, the petitioner makes and files in said state court an affidavit stating that he has reason to believe, and does believe, that from prejudice or local influence he will not be able to obtain justice in such state court."

Provided, that nothing herein contained shall affect any suit already removed to a Circuit Court of the United States.

SECTION 3. That sections 639 and 640 of the Revised Statutes of the United States be, and the same are hereby repealed.

OBITUARIES.

ILLINOIS.

THOMAS HOYNE.

Thomas Hoyne was born in New York City, February 11, 1817. He was a son of Irish parents who had been compelled to emigrate in 1815, in consequence of trouble in which his father had become involved with the English government. His father died in 1829, and his mother within the following year. He was the eldest of seven children. Thus left poor and unfriended, he became an apprentice to a manufacturer of fancy goods, and worked in that capacity for four years. In the meantime he pursued his studies, and in 1835 became a clerk in a large jobbing house. He soon after became a law student in the office of Hon. John Brinkerhoff. In the summer of 1837 he removed to Chicago, at the instance of his friend George Manierre, who was then clerk of the circuit court of which he afterwards became judge. In his early life Mr. Hoyne took an active part in literary matters. Soon after his removal to Chicago he taught in one of the public schools. He completed his legal studies in the office of the Hon. John Y. Scammon, and was admitted to practice in the fall of 1839. In 1842 he removed to Galena, Illinois, where he pursued the practice of the law for two years, after which he returned to Chicago, where he continued to reside until the time of his death. In 1847 he was elected Probate

Judge of Cook County. At the expiration of his term of office he formed a partnership with Mark Skinner, which continued until the former was elected Circuit Judge in 1851.

Mr. Hoyne was a Democrat in politics, and took an active interest in political affairs. It may be truly said of him that he was a thoroughly honest, bold, and uncompromising politician. He would resist what he believed to be a wrong in his own party, as quickly and as vigorously as he would assail what he regarded as an error in the opposing organization. He advocated the Mexican War, became a Free-soiler in 1848, and supported Van Buren and Adams as a presidential elector. Mr. Hoyne was appointed United States District Attorney for Illinois by President Pierce in 1853. He was a warm supporter of Judge Douglas until 1856, when he opposed the great Illinois senator, and supported the policy of President Buchanan. In 1859, Mr. Hoyne was made Marshal for the Northern District of Illinois, and in 1860 superintended the taking of the United States census for the Northern District of Illinois.

Mr. Hoyne was one of the founders of the University of Chicago in 1857, and during its whole existence to the time of his death rendered in its behalf a most important and conspicuous service. The Hoyne Professorship of International and Constitutional Law was created in his honor, and he received from the University the degree of Doctor of Laws. He also made liberal pecuniary contributions to the institution, and the success of the Chicago Astronomical Society connected with it was largely due to his personal efforts. He also took a leading part in establishing the Chicago Free Public Library, and was also one of the originators of the Chicago Bar Association.

In all public positions, and throughout his professional and his private life, Thomas Hoyne was distinguished by

independence and courage, vigorous ability, and zealous devotion to whatever cause he espoused, a keen sense of honor, and an aggressive integrity. In his profession of the law he held for many years a prominent and honorable position. His business qualifications were exceptionally good, and he managed his own affairs and the interests committed to his charge with marked success.

He was married in 1840 to Leonora M. Temple, daughter of the late John T. Temple, M. D. Seven children blessed this union, of whom the eldest, Temple S., is a professor in Hahnemann Medical College, and the second, Thomas M., a member of his father's firm. Thomas Hoyne was killed in a railroad accident at Carlton, New York, July 27, 1883.

The limits of this sketch forbid further detail. Were it not so, many pages might easily be filled with interesting incidents and characteristics calculated to increase our respect for the man and the profession to which his life was chiefly devoted.

MARYLAND.

LAWRENCE L. CONRAD.

Lawrence Lewis Conrad, of Baltimore, was born in Pass Christian, Mississippi, and died in Baltimore County, August 7, 1883, in the forty-third year of his age. He was the son of the late Charles M. Conrad, of Louisiana, Secretary of War under President Fillmore, and his mother was a daughter of Lawrence Lewis and grand-niece of General George Washington. The deceased was a graduate of the universities of Virginia and Louisiana, from which latter institution he received his degree of LL.B. At the beginning of the late war he was in service in Virginia, but

he was soon ordered to Louisiana, where he was assigned to the staff of Lieut. General Buckner, with whom he continued until the war ended. He then began the practice of his profession in New Orleans, but in 1868 he moved to Baltimore, where he soon attained an enviable position at the bar. He was a man of great personal attractions, of high professional and literary attainments, of indomitable courage and perseverance, and commanded and deserved the entire confidence of a large and rapidly increasing circle of clients and friends. He never held any political office, but took an active interest and part in every measure for the good of the city and state where he had made his home.

M I C H I G A N .

DAVID DARWIN HUGHES.

D. Darwin Hughes was born in Camillus, N. Y., February 1, 1823, and died at Grand Rapids, Michigan, July 12, 1883. He was of Welsh descent, the American ancestor having settled at East Haven, Conn., in 1748. His father, Henry Hughes, removed with his family to Eaton County, Mich., in 1810, of which county he was made deputy clerk in 1842. He entered regularly upon the study of the law in 1844; was admitted to the bar in 1846; became law partner of Isaac E. Gary, at Marshall, Mich., in 1851, and on Mr. Gary's death in 1854, associated Mr. Justin D. Wolley with him, and their co-partnership continued until 1871. By this time Mr. Hughes had become the leader of the bar in Western Michigan, and was esteemed one of the ablest and most successful advocates in the Northwest. The Grand Rapids and Indiana Railroad Company invited him to become its general

counsel, and he removed to Grand Rapids for the purpose, taking with him Thomas J. O'Brien as partner. Soon afterwards Mitchell J. Smiley was received into the partnership, and the firm of Hughes, O'Brien & Smiley transacted a large and very successful business until 1882, when Mr. O'Brien retired, and two sons of Mr. Hughes—D. Darwin, Jr., and Walter—were admitted to a share in the business. By this time premonitions of what proved a mortal disease of the heart had been observed, and the best medical aid was resorted to, but without avail. Mr. Hughes leaves a widow and five children, having lost two children in infancy.

The only offices held by Mr. Hughes were U. S. Commissioner for a short time, Prosecuting Attorney for four years in his early practice, and Mayor of the city of Marshall for one term. He was in politics a Democrat, and his party, then in a hopeless minority, several times made use of his name as a candidate for important offices, voting for him twice for Congress and twice for Justice of the Supreme Court; but he was very little of a partisan, and seemed to have little or no desire for official honors. He was tendered the command of a regiment during the Civil War, but declined it, though he gave active support to the government at all times.

The true field for the intellectual activity of Mr. Hughes was no doubt the bar. He had great logical powers, quick perceptions, and a fine command of language; he was agreeable in person and address; he had a keen sense of right and wrong, and that candor and frankness that always challenged and secured the confidence of the court and the respect of opponents. His addresses were characterized by simplicity and earnestness, and were equally powerful, whether directed to the facts of his case or to the law.

Some few of the cases with which he was connected may be mentioned, because they had in his own state unusual

importance. One of these was *The People vs. The Township Board of Salem*, reported in 20 Mich. 452. The case involved the constitutional power of the municipalities of the state to loan their credit to railroads. The township, under legislative permission, had voted railroad aid, and the township board refused to obey the vote and issue bonds. Mr. Hughes applied to the Supreme Court for a mandamus, and argued the application with great power, but was unsuccessful. The court held the legislation unwarranted, and the business of voting aid to railroads came to an end. It may be mentioned, however, that bonds which had been previously issued and sold were recognized and enforced, and with this outcome Mr. Hughes was content. Another notable case was *Stuart vs. Kalamazoo*, reported in 30 Mich. 629. The case involved the power of the municipalities to provide for giving classical education in the public schools of the state which are supported by taxation. Mr. Hughes appeared for the schools, and the favorable judgment secured has been a landmark in the educational history of the state since its rendition. Another case worthy of mention was *Newcomer vs. Van Dusen*, reported in 40 Mich. 90. The leading question in the case was whether the superintendent of a state asylum for the insane was liable for false imprisonment for the reception and detention, in good faith and by mere error in judgment, of a person committed to him by relatives as insane, but who proved not to be so. In this case, unfortunately, the court was unable to agree upon a conclusion. Mr. Hughes defended the superintendent with great fidelity and earnestness, believing that without a favorable result it was impossible to give either him or the asylum due protection.

Mr. Hughes was familiar with the natural history of the Northwest, and at one time wrote and published valuable papers on ornithology.

NEW YORK.

EDGAR S. VAN WINKLE.

Edgar S. Van Winkle, a son of Peter Van Winkle, an old New York merchant, was born in New York City, August 3, 1810. His mother was a daughter of General Abraham Godwin, of New Jersey, an officer in the Revolutionary army. He finished his classical studies at Nassau Hall Academy at the age of fourteen, and then commenced the study of the law in the office of John P. Jackson, an eminent lawyer and gentleman of Newark. After pursuing the study of the law for several years in Newark, Mr. Van Winkle removed to the city of New York, and entered the office of William Slosson, Esq., who was then an eminent member of the New York bar, with whom he continued until his admission to the bar in 1831.

From the time he was admitted to the bar till shortly before his death, on December 9, 1882, a period of over fifty years, Mr. Van Winkle was actively engaged in the practice of his profession as a lawyer in his native city, New York. He had the entire confidence and respect of all his clients, and to a remarkable degree retained their patronage for many years; and frequently, upon the death of clients, their children became his clients in their parents' places.

No lawyer could have more profound respect for the judicial office than was possessed by Mr. Van Winkle, and it may safely be said of him that when defeated in a cause, he was never known to express to client, friend, or to any one, any disrespect, or to utter an unkind remark against a judge who may have decided against him.

One reason why he was able to accomplish so much in his profession, and always to be serene, unruffled, deliberate,

and clear-minded, was that he never allowed himself to be unnecessarily anxious or worried about results, but believed that when he had carefully prepared himself for the trial or argument of a cause, and had faithfully and to the best of his ability presented his client's interests to the court or jury, his duty was in a great measure ended, and the responsibility for the result to be reached rested upon the tribunal.

It has been well said, in the memorial of Mr. Van Winkle which was prepared for the New York Bar Association by his intimate and life-long friend, Hon. Benjamin D. Silliman, "It is not extravagant to say of him that he was a model lawyer. He had a remarkable career, alike in its duration and its success. His close attention to his studies and his duties was soon rewarded by a large clientage and full practice. Early and always an untiring student, he became master of the general principles of jurisprudence, and especially familiar with that relating to trusts, wills, real estate, and commercial law."

Endowed by nature with rare power of concentrated and continuous thought, and with a sedate but active mind and strong good sense, he gave to every case in which he was engaged, patient and thorough investigation and thought, and his cool, clear conclusions and judgment had as nearly the certainty of mathematics as pertains to the solution of questions of law. Such was the character of his mind that, in every case submitted to him, he sought for the intrinsic right rather than to discover whether, because of some particular decision, his client's case could possibly, right or wrong, be sustained. If it were not clearly tenable, he advised, and in most cases secured, reasonable and proper adjustments and settlements. Had it not been, as it was absolutely with him, a matter of principle to take this course, it would have been wise as a matter of policy; for

where he did proceed with litigation, there was a presumption that the right was on the side he advocated, and courts and juries would feel that it had the sanction of his judgment and convictions. One of his most marked traits was his imperturbable coolness and self-possession. Though quick and sensitive, he was never flurried, and his even balance and judgment were never more conspicuous than in emergencies.

No man in the profession had a more affirmative character for truth, integrity, and honor (if we may use a phrase so tautologous), or had more fully the respect and confidence and warm personal regard of the courts, his brethren of the bar, and of those whose interests were intrusted to him. Invariably dignified, he was courteous toward all, and nobody could be otherwise toward him. Such was his personal and professional standing, that when Daniel Webster, some forty years ago, determined to remove to New York and practise law there, Mr. Van Winkle was selected as his associate, and continued in partnership with him during his residence there, and until public affairs called him to a different sphere.

The high repute of Mr. Van Winkle's office attracted to it as students many young gentlemen preparing for the profession, and among its graduates are numbers since distinguished at the bar, in public life, and as men of letters.

Mr. Van Winkle was one of the founders and the first Vice-President of the New York Bar Association, and, as we all know, one of its most valuable members, taking, until his health became impaired, an active and important part in its affairs and proceedings.

As a companion he was indeed delightful, and as a friend, no man was ever more faithful or affectionate. Intrinsic excellence marked every phase of his character. He was

not a man of professions—a surface man—but sincerity and truth were the law of his nature. His warm and honest heart knew no guile. He was genial, refined, and cordial; abounded in wit and humor, and goodfellowship, while his stores of knowledge were so rich and so varied that his conversation was always attractive and instructive.

In December, 1878, his health gave way, and was never fully restored, though he was able, until within the year preceding his death, to participate in the business of his office. During the last year he became gradually weaker, and at length, without pain or agitation, surrounded by his family and friends, passed gently to his rest. Such had been his pure and useful and upright life, and such his religious faith, that he approached the grave without fear.

He leaves behind him the record of his well-spent years: his good example and honored name, and an ever-abiding place in the hearts of those who love and mourn him.

VIRGINIA.

ROBERT OULD.

Robert Ould, of Richmond, Virginia, was born in Georgetown, D. C., January 31, 1820, and died December 15, 1882. He was liberally educated in the city of his birth, and afterwards at William and Mary College, in Virginia, where he studied law under Judge Beverly Tucker.

Well equipped for his profession, he began its practice in Washington, and by his industry and talents rose rapidly to a high position at that bar.

He was appointed District Attorney by President Buchanan, and was distinguished for skill and eloquence as

a prosecutor; and gained extraordinary reputation for his signal ability in the conduct of the Sickles case, in which he measured swords in not unequal conflict with the late Secretary Stanton, leading counsel for the defense.

His attachment to Virginia was equal to that of her own sons; and when that state seceded in 1861, he removed to Richmond, and cast his lot with the South in the impending strife.

He was so well known, even at that day, for legal learning, and in the branches of public law, which constitute the jurist, that he was appointed by the President of the Confederate states, commissioner for the exchange of prisoners. In this position, until the close of the war, he conducted negotiations for exchange in a candid and manly spirit, and with a noble consideration for the claims of justice, and a tender care of the unfortunate prisoners on both sides. And when the official correspondence is published, it will appear that Robert Ould was "clear in his great office" of all responsibility for the mortality and sufferings of the captives, Federal and Confederate.

Judge Ould was at the surrender of General Lee, and tendered his parole to General Grant, who declined it, holding an agent for exchange not subject to capture. Judge Ould returned to Richmond, and was arrested and put in close confinement by order of Secretary Stanton. A military commission inquired into his conduct, in his absence, and released him after two months' confinement.

Judge Ould remained in Richmond, and forming a partnership with Major Isaac Carrington, the firm attracted a large and lucrative practice.

From 1865 until his death, he stood at the bar of Virginia "if not first, in the very first line." He had the success which follows learning, eloquence, and zeal in the profession, and in these he was surpassed by none of his great competitors.

At *nisi prius*, in chancery, and in the courts of last resort, federal and state, he earned and won the fame of a splendid jurist and a great advocate.

His intellect was of a high order. He was so acute and rapid in his analysis, as to give him that clear perspicacity by which, through the intricate labyrinth of an entangled problem, he discussed the real point of contention. When this pivotal issue was reached, with wondrous fertility and rare skill he summoned to his aid all that industry could extract from authority, or genius and profound study could educe from the realms of reason, philosophy, and imagination. His resources seemed inexhaustible. His logic was compact; his arrangement methodical; his generalizations philosophic; and his eloquence bold, ardent, and at times adorned with the true spirit of poetry.

In debate, his analytic power enabled him to detect quickly the fallacy in his opponent's argument; and he then assailed it with all the weapons of logic, wit, humor, and invective.

He was a great worker. His mind, active and inquisitive, seemed ever fresh and to need no repose. While not as learned as many others, he knew all the avenues of useful investigation; and his very retentive memory, with his orderly processes of thought, kept in well-assorted forms the original and acquired stores of his profound study and extensive reading. Thus, in every case, gathering the learning of the books, he combined the whole array of his marvellous powers and acquirements with concentrated effect to sustain the conclusions he sought to enforce.

It was well said of him by a friend, that, "with such attributes, it is easy to understand that Judge Ould often gained causes which might have been lost, and lost few or none that he ought to have won." And a distinguished Judge has said, "It was not safe for a jury, or even an appel-

late court, to decide a case fresh from the influence of his powerful logic and burning eloquence."

But he was candid, fair, and bold in discussion. He bravely met his foe in open field, and never by subterfuge or evasion shrank from the full force of his opponent's argument. He was too strong to fear the shock of conflict, and too honorable to achieve victory by any but noble means.

To these intellectual gifts were superadded a liberal nature; frank, cordial, and dignified manners; sincerity and constancy in friendship; kindness and gentleness, with which no arrogance mingled, to his associates at the bar, and a respectful deference to the courts before which he appeared; a manly and impressive face and form; a melodious voice; a fervid, not vehement, action, and dauntless courage. In social intercourse his conversation was instructive, while enlivened with wit, humor, and fancy. His home was the seat of a generous, refined, and unostentatious hospitality.

He had an extensive knowledge of political science. Trained in the Virginia school, he held with tenacious consistency the constitutional views of the state rights democracy; and while his broad mind recognized their modification, as required by the new order of things, yet he retained those canons of interpretation, as fundamental principles of his faith, which guarded the reserved authority of the states against any encroachments by the delegated power of the federal government.

He had, since 1870, devoted special study, with extensive reading, to Christian theology. His acquisitions in this field were very remarkable; and as a student, and teacher of students, of the Bible, he gave much of time and labor, in the midst of his busy professional life. The testimony of his pastor, the Rev. Dr. Hoge, to his piety, religious work,

and valuable counsels as an elder in the church, shows how possible it is for an earnest man to be at once a laborious lawyer and a diligent and critical Bible student.

His last appearance was in presenting to the Court of Appeals the proceedings of the bar upon the death of its venerable President, the late Judge Moncure. In his touching eulogy, clothed in an eloquence chaste and beautiful, and rarely equaled, upon a review of the thirty years of his judicial career, he said, in exultant tones: "Let us thank God that he gave to the country such a patriot, to the state such a citizen, to the administration of the law such a magistrate, and to those that loved him such a friend." And then, in solemn and almost plaintive tones, never to be forgotten, he closed his splendid oration with these prophetic words:

"Though a senior to all of us, he has preceded us but a little. The hearts of even the youngest of us are but 'muffled drums, beating funeral dirges to the grave.' Even while we are viewing the procession of the dead, the order comes for us to fall in. And now in this moment, when I am speaking the last words which I will ever utter in the presence of this court, as it is now formed, I can express no better hope for bench and bar than that, when our summons comes, we may receive and welcome it as did our friend and chief."

The eloquent tongue is still, and his voice is hushed forever. In a week he received and welcomed his summons, and in the peace of God entered, as his friend and chief had done, upon his eternal rest.

MEMORANDUM

AS TO THE TIME AND PLACE OF THE NEXT ANNUAL MEETING.

To the Executive Committee of the American Bar Association.

GENTLEMEN,—In obedience to your directions, I sent out a circular to each member, as follows:

BALTIMORE, 10 *Sept.*, 1883.

DEAR SIR,—The Executive Committee of the American Bar Association desire your opinion as to whether the future meetings of the Association shall be called at Saratoga, as heretofore, or at different places in different sections of the country, from year to year. Will you be good enough to inform me, at your earliest convenience, which policy you believe would best subserve the interests of the Association. I enclose you two slips—one in favor of continuing at Saratoga, and the other in favor of a change of policy, and will thank you to return one of them to me, over your signature, within the present month.

As between Saratoga and Chicago, as the place of the next meeting, please indicate, also, which you prefer?

The *time* has been fixed, as usual, for the latter part of August.

Yours, truly,

EDWARD OTIS HINKLEY, *Secretary.*

In answer thereto I have received and counted 504 votes, resulting as follows:

1. For Saratoga in 1884, of whom, however, 29 vote for a change.	250
2. To continue at Saratoga, of whom, however, some vote for a change, and also some for Chicago.	248
3. For Chicago in 1884.	166
4. For a change.	183
5. From Saratoga in 1884.	250
Deduct those who vote for change.	29
	221
6. For either Chicago in 1884, or for a change, or for both—that is, combining Nos. 3 and 4 without duplicating.	221

(349)

A few do not vote definitely.

Forty-two vote specially, scattering.

From this result I conclude we must meet at Saratoga in 1884, since the vote is nearly three to two as between that place and Chicago.

It is to be noted, however, that as only 221 vote for Saratoga, without change, and the *same number* vote for either Chicago or a change, *the balance hangs even*.

Respectfully submitted,

EDWARD OTIS HINKLEY.

NOTE.—In accordance with the above, the Executive Committee have decided that the next Annual Meeting shall be held at Saratoga Springs, New York, on August 20th, 21st, and 22d, 1884.

MEMORANDUM
OF
SUBJECTS REFERRED TO COMMITTEES.

Resolution of John M. Thomas with reference to the preparation of summaries of the judicial systems of the respective states.

Referred to the Committee on Judicial Administration and Remedial Procedure. (See page 42.)

Report from the Philadelphia Law Association, relating to delays in the Supreme Court of the United States.

Referred to same committee. (See page 72.)

Paper read by Seymour D. Thompson, on "Abuses of the Writ of Habeas Corpus."

Referred to the Committee on Jurisprudence and Law Reform. (See page 73.)

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The Seventh Annual Meeting will be held at Saratoga
Springs, New York, on August 20th, 21st,
and 22d, 1884.

REPORT

OF THE

SEVENTH ANNUAL MEETING

OF THE

AMERICAN BAR ASSOCIATION,

HELD AT

SARATOGA SPRINGS, NEW YORK,

August 20, 21, and 22, 1884.

PHILADELPHIA :

PRESS OF GEORGE S. HARRIS & SONS, 712-714 ARCH STREET.
1884

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1884.

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TRANSACTIONS OF THE SEVENTH ANNUAL MEETING
OF THE
AMERICAN BAR ASSOCIATION,
HELD IN
PUTNAM HALL, SARATOGA SPRINGS, N. Y.,
August 20, 21, and 22, 1884.

Wednesday, August 20, 10.30 A. M.

Luke P. Poland, of Vermont, Chairman of the Executive Committee, called the meeting to order, and said:

The first business of this first session of our Seventh Annual Meeting, will be the Annual Address by the President of the Association. I have the pleasure of presenting to you Cortlandt Parker, of New Jersey, President of the Association.

The President then delivered his Annual Address. (*See Appendix.*)

Upon the conclusion of the Address, the President said:

The first business in order is the nomination and election of members.

Luke P. Poland, on behalf of the General Council, presented several names for membership, all of whom were duly elected.

(*See List of Members Elected, at the end of the Minutes of Proceedings.*)

The President:

The next business in order is the election of the General Council.

After a recess of fifteen minutes the names of the states were called by the Secretary, and the General Council was elected.

(See List of Officers in the Appendix.)

The Secretary then read his Report, as follows:

The number of members on the roll in the year before last was 581. In the Sixth Annual Report are the names of 636 members, being a gain of 55.

There are three states unrepresented; Colorado, Nevada, and California.

In the work of last year, several subjects were referred to committees, as follows: 1st, A resolution of John M. Thomas, with reference to the preparation of summaries of the judicial systems of the respective states, was referred to the Committee on Judicial Administration and Remedial Procedure; 2d, the report of the Committee of the Philadelphia Law Association relating to delays in the Supreme Court of the United States, was referred to the same Committee; 3d, the paper read by Seymour D. Thompson on Abuses of the Writ of Habeas Corpus, was referred to the Committee on Jurisprudence and Law Reform.

To the Executive Committee was referred the question of the place of meeting for this year, and that committee directed me to send out circulars, to take a vote of the members of the Association on that subject. A memorandum of those votes appears on page 349 of the last Annual Report. Without reading it, I will simply state that the result of the whole is an exact balance between this place and any other; that is to say, that 221 voted for Saratoga, without change, and the same number of votes precisely were for either Chicago or a change. The balance hangs even, so that the Executive Committee had no other duty to perform than to select Saratoga as a place of meeting until they should

have a better opportunity of ascertaining the will of members of this Association.

A great many applications are made to me on the subject of membership. As we have a Constitution, I uniformly refer all members to that. I have nothing to do with that question, but I may be pardoned for reading the article and asking members to attend particularly to it, since some questions occasionally arise on that point. Article IV. of the Constitution reads as follows: (Reads same.) Gentlemen who wish to nominate members will please write the names on a piece of paper, and procure the signatures of the Local Council, and hand them to the Chairman of the General Council.

A by-law was adopted last year in regard to the duties of the secretary and the chairman of the Executive Committee, providing for an arrangement by a system of exchanges of our *Transactions* with other Bar Associations. The Chairman of the Committee has had some communications with the Smithsonian Institute, and we hope to accomplish that object.

I have only to refer to my duties as one of the Obituary Committee, and will particularly request the Vice-President for each State to afford me proper materials for printing suitable notices for any of our members who have died during the last year.

On motion of Judge Poland, the report of the Secretary was accepted.

The President said:

The next business in order is the report of the Executive Committee.

Luke P. Poland, of Vermont:

I think it has never been required that any formal report should be made by the Executive Committee. The active

transactions are pretty much embraced in the report of the Secretary and the Treasurer, and what we do and agree upon is developed in the programme that you have before you. The various processes and modes by which we arrive at certain ends would not be interesting to hear.

The President announced the appointment of the Committee on Publications, viz.: Alexander R. Lawton, of Georgia; Francis Rawle, of Pennsylvania; Andrew Allison,* of Tennessee; Charles A. Peabody, of New York; and Garret D. W. Vroom, of New Jersey.

Skipwith Wilmer, of Maryland, moved that so much of the President's address as referred to a change in the form of our discussions at subsequent meetings be referred to the Executive Committee, with the request that they incorporate in the programme for the next annual meeting the plan suggested by the President.

After brief debate, Mr. Wilmer modified his motion so as to read thus: That the Executive Committee be requested to consider whether the recommendations of the President cannot be profitably incorporated in the programme for the Annual Meeting of next year.

The matter was then, on motion, postponed until Thursday morning.

Luke P. Poland, Chairman of the Executive Committee:

Before we adjourn, it is necessary that a committee should be appointed to audit the Treasurer's accounts, and I would name Mr. Wing, of Vermont, and Mr. Knott, of Maryland.

On motion, the Association then adjourned until 8 o'clock P. M.

* Mr. Allison, having read a paper at this meeting, declined to act on this committee; and the President afterwards appointed H. C. Semple, of Alabama, in his place.

Wednesday Evening, 8 o'clock.

Luke P. Poland, Chairman of the General Council, reported that the Council recommended for admission certain persons as members of the Association, who were duly elected.

(See List of Members Elected, at the end of the Minutes of Proceedings.)

The President :

The next business in order is a paper by Andrew Allison, of Nashville, Tennessee, on "The Rise and Probable Decline of Private Corporations in America."

Mr. Allison then read his paper. *(See Appendix.)*

The President said :

The second paper of the evening will now be read by Alexander Porter Morse, of Washington, on "The Citizen in Relation to the State."

Mr. Morse then read his paper.

The President said :

The next business in order, according to the programme—permissible at least—is a discussion upon the subjects of the papers read. The meeting is open, under this, for any discussion that may arise.

James O. Broadhead, of Missouri, said :

I think it rather too late and rather too warm to discuss any questions arising from the very interesting papers that we have heard, and I move, therefore, that we adjourn. I suppose the discussion can be taken up at any other time.

Simon Sterne, of New York, seconded the motion.

The President said :

The hour for meeting to-morrow morning will be ten

o'clock. I am compelled to state to the Association that I am summoned, on a matter from which I cannot get away, to the City of New York to-morrow, and that the duties of the Presidency to-morrow will be performed by one of the Vice Presidents, who will be called to take my place. I hope to return, however, and to be with the Association again on Friday morning.

The Association then adjourned.

Thursday morning, August 21.

Luke P. Poland, of Vermont, called the meeting to order at 10.30 o'clock, and said:

Rufus King, Vice President for the State of Ohio, will preside to-day in the absence of the President, Mr. Parker.

Mr. King took the chair, and said:

Before proceeding with our regular programme, there is some routine business which the Executive Committee desire to lay before the Association.

Luke P. Poland:

Mr. Chairman, the General Council recommend certain gentlemen for admission to membership in the Association.

The names having been read they were all duly elected.

(See List of Members Elected, at the end of the Minutes.)

The Chairman said:

The regular procedure in the order of our business this morning is the Annual Address, to be delivered by the Honorable John F. Dillon, of New York. It is quite unnecessary, gentlemen, that I should offer any preface for Judge Dillon. I have the honor of presenting him.

Mr. Dillon then delivered the Annual Address. *(See Appendix.)*

Ignatius C. Grubb, of Delaware:

I would move, sir, that the heartiest thanks of this Association be tendered to Judge Dillon for his valuable and most eloquent address this day delivered.

S. O. Griswold, of Ohio:

That motion is not in order. There is a provision in the Constitution against any such vote.

Luke P. Poland:

The motion that is made is one that we should all be most happy to vote for. It has never happened, but it might happen to us that we should be asked to pass such a resolution as that, which might be distasteful to some of us, and so we have a provision in our Constitution against it.

B. A. Willis, of New York:

I desire to submit a motion which I think is in order, and it is this: That the valuable suggestions contained in the address of Judge Dillon receive the commendation of this body.

S. O. Griswold, of Ohio:

Is that not a distinction without a difference?

B. A. Willis, of New York:

I press my motion, and I ask that it be carried by unanimous consent.

The motion of Mr. Willis was adopted.

The Secretary:

It is usual at this time to announce the names of visiting delegates from different state organizations.

From Georgia—Henry Jackson, Thomas J. Simmons, R. F. Lyon.

From Tennessee—J. M. Dickinson, J. C. Bradford, M. M. Neil.

From Missouri—Henry Hitchcock, Charles L. Davison, Edward R. Turner.

From the District of Columbia—Henry Wise Garnett, Alexander Porter Morse, F. P. Cuppy.

From Texas—Richard J. Walker.

The Chairman :

The report of the Committee on Jurisprudence and Law Reform is now in order.

Wm. Allen Butler, of New York, Chairman of that committee, said :

During the past year we have continued our efforts in regard to the passage of the two acts which were approved by the Association, relating to the acknowledgment of deeds, and to divorce. The acts as recommended by the Association have been, through the medium of the Local Councils, communicated to the legislatures of every state represented in the Association; and, as reported last year, Missouri passed the act in relation to divorce, precisely as recommended by the Association. Minnesota passed the act in relation to the acknowledgment of deeds. Various statutes have been passed in the states in reference to acknowledgments of deeds, simplifying the methods, some of which, I think, have been aided by the action of the Association. Owing to the fact mentioned by the President yesterday, that in so many of the states the legislatures have not been in session this year, we are not able to make a full report, but shall hope to do so at the next Annual Meeting. Meantime we have put ourselves in communication with the legislatures of every state represented in the Association to accomplish the end proposed.

At the last meeting a paper was read by Judge Thompson, on the abuse of the writ of *habeas corpus*. That will be found at page 243 of the Report of last year. That paper

was referred to the Committee on Jurisprudence and Law Reform. The committee have considered the subject, and, for the convenience of the Association, their report has been printed, and is on the table for distribution. I do not propose, as the report is in print, to trouble the Association with reading it entirely, but it may be convenient that I should call the attention of the Association to the leading points. Judge Thompson pointed out four classes of the abuses of the writ of *habeas corpus*, as follows :

1. The federal courts have sought to control the exercise of certain important functions of the federal executive.
2. State courts have attempted to subject the executive department of their own state to judicial control.
3. State courts have attempted to interfere with functions of the federal executive.
4. Federal courts and state courts have "attacked each other's processes and opened each other's prisons."

As these abuses consist in the improper exercise of judicial powers, it is obvious that there are but two remedies which can be applied.

I. That the Courts themselves should be brought to recognize the existence of the abuses, and should voluntarily recede from the positions which have led to them; and

II. Legislation—both federal and state.

We submit that the most important class of cases in which the interference of the federal courts has arisen, embraces those arising under the extradition treaties.

The scheme of extradition, as expressed in the provisions of the act of Congress of August 12, 1848, contemplates (briefly) four stages in the process, viz., the issuing of the warrant by the judge or commissioner, the hearing before such judge or commissioner, the return of the testimony to the state department, and the order for the surrender of the prisoner by the secretary of state.

Over this scheme or method of procedure the federal courts have asserted a supervisory power; and as this exercise of judicial power has resulted in certain abuses, the question is whether the power should be completely taken away, or whether its exercise should merely be circumscribed.

To abolish entirely the supervisory power on the part of the federal courts over proceedings for extradition would seem to be going too far.

And the reasons are given for that proposition.

The plan which suggests itself to your committee is that an appeal from the decision of the commissioner, if adverse to the prisoner, should lie to the circuit court; and that at the hearing of the appeal the circuit judge and the district judge should sit, or that provision be made for the calling in by either judge of the other, or of the district judge of an adjoining district, in important cases, the decision of the senior judge in the case of disagreement between two district judges to control, with the right of certifying the questions of difference to the Supreme Court. The decision of such a Court, if adverse to the prisoner, would enforce the respect of all who were interested on his behalf; while if the court should be of opinion that he be discharged, such discharge could not fairly be complained of either by the federal executive or by the foreign state.

That is the remedy proposed for the first of the abuses.

The second class of abuses mentioned in Judge Thompson's paper embraces those cases in which "state courts have attempted to subject the executive of their own state to judicial control."

The committee, however, do not deem it possible to make any suggestions as to remedying abuses of this character. Their existence depends upon the relations between the courts and the several executives, as adjusted by the con-

stitutions and laws of each state; and no general plan for readjustment can be suggested. To enter into schemes amendatory of the constitution and laws of all the states, would seem to be to go beyond the scope of the reference to the committee as contemplated by the resolution.

There is, however, a class of cases in which state courts interfere, not with the state executive in state matters, but with the executive of one state in discharging his duty towards the government of a sister state, which seems to call for some attention, and which may be noticed under this head.

The report gives an analysis of the case of *Robb vs. Connolly*, one of the most recent cases. That was a case which emphasizes Judge Thompson's statement in regard to the abuses of the writ, where one state court interferes with the action of the executive of another state, and presents the spectacle of a double interference—the state court staying the actions of the governors of two states, and this ruling approved by the highest federal court—while an inferior federal court, in its turn, ignores the process of the highest state court and sets its prisoner free.

The remedy for this condition of things would seem to be either :

1st. That the jurisdiction now existing in the state courts over such cases should be abridged or taken away.

2d. That the federal circuit courts should be deprived of the power of issuing writs of *habeas corpus* in such cases; or,

3d. That, from the action of the circuit courts in *habeas corpus* cases of this character, an appeal, and not a mere writ of error, should lie to the Supreme Court.

It would, no doubt, be eminently proper that the ultimate decision of cases of this sort should rest with the Supreme Court of the United States, for not only do the questions relate to authority given by the federal laws, but they

assume, or may assume, the aspect of a contest between the authorities of two states. But the present condition of the docket of this court, which has already been fully brought to the attention of the Association, admonishes us that appeals of this nature which, if granted, would be eagerly sought whenever the prisoner had friends or money, would produce more evils than they would cure. The desired result is now attainable, so far as questions of law are concerned, by writ of error.

There it may be proper to make a qualification. I understand from Judge Poland that some legislation is intended, to restore the writ of error in a certain class of cases, in which, by an act of Congress, it was suspended, and I trust that Judge Poland will supplement our report by a statement to the Association of the precise condition in which the legislation of Congress stands in this regard. An act of Congress took away and limited the right of writ of error in a certain class of cases, and having reference to a case then pending in the Supreme Court. An effort is being made to correct that now.

Some court must certainly be open to applications for this relief, and it should be whatever court competent to do justice can be quickest reached. This will ordinarily be the court of a state; but if either party prefers a court of the United States, it would seem fully in accordance with the spirit of our more recent legislation to permit a removal of the cause before hearing, upon a proper showing that a constitutional question is involved, into the Circuit Court of the United States.

Then the third class of cases is where state courts have attempted to interfere with the functions of the federal executive. We think there is no trouble with those, and I will not further discuss them.

The last class of cases to be noticed embrace those in which

the federal and state courts have claimed the right to interfere with each other's processes and do away with the effect of each other's judgments.

So far as respects attempts on the part of state tribunals to interfere with the execution of the writs or the enforcement of the judgments of the courts of the United States, your committee do not consider that any legislation is necessary. The decisions in *Ableman vs. Booth*, and in *Tarble's case*, already referred to, cover cases of this description, and the rule there laid down may be safely relied upon to forbid a recurrence of abuses of this character.

But the complaint that the process, judgments, and decrees of state courts are improperly interfered with by writs of *habeas corpus* issued by federal tribunals is a just one, and the abuse still remains as a mischief in our jurisprudence which surely demands a remedy by the passage of an act of Congress, whereby it may be provided that when a prisoner under a writ from a state court is discharged under a *habeas corpus* issued by circuit or a district court, an appeal may be taken by the proper state authorities to the Supreme Court of the United States. Possibly, also, a similar appeal should be allowed to the party in custody, if the decision of the federal court should be that he be remanded.

This, as it seemed to the committee, may be supplied by so amending the existing statutes as to give the state or other public authorities interested in the case, though not a party to the record, the right to intervene and to have an adverse decision reviewed.

The committee recommend the passage of the following resolution :

Resolved, That it be referred to the Committee on Jurisprudence and Law Reform, to prepare suitable amendments to the provisions of the Revised Statutes of the United States, relating to writs of *habeas corpus*, to carry into effect

the recommendations of the foregoing report, and to report the same to this Association at its next annual meeting.

I would take leave to say that this subject presented to the Association by Judge Thompson in his very able paper last year is, as all the members of the Association will see, one of very great practical importance in the administration of justice, state and federal, and all that the committee have attempted to do is to point out, in a more summary way than Judge Thompson did in his paper, some means of relief, with such suggestions as seemed proper to them; and they ask leave from the Association, after they have considered this report, and after discussing it as far as may seem proper, to refer the subject back, in order that we may present the draft of such amendments as may be found practicable, especially in reference to the provision of the revised statutes.

There is but one other subject which has been referred to this committee, upon which we have not reported, and in reference to which we ask to postpone our report until next year. It had reference to habitual criminals, that is, the best means of conducting proceedings in regard to, and relieving society from, the burden of habitual criminals. That subject we reserve until next year. The habitual criminal we have always with us, and he will probably keep until next summer, when we shall be prepared to report.

REPORT ON ABUSES OF THE WRIT OF HABEAS CORPUS.

To the President of the American Bar Association:

The Committee on Jurisprudence and Law Reform, to whom, at the last meeting of the Association, was referred the paper read by Hon. Seymour D. Thompson, on the "Abuses of the Writ of *Habeas Corpus*," to report "as to the

best method of remedying such abuses," respectfully reports as follows:

The general purpose of the writ of *habeas corpus* was properly stated by Judge Thompson to be "a means of subjecting to the superintendence of superior courts and judges, arrests and imprisonments made by ministerial officers and by inferior magistrates."

This original purpose of the writ has been lost sight of in very many instances in the history of the jurisprudence of the United States; and the abuses consequent upon this departure from the original design of the writ, as they are stated by Judge Thompson, may be divided into four classes, viz.:

1. The Federal Courts have sought to control the exercise of certain important functions of the Federal Executive.
2. State Courts have attempted to subject the Executive department of their own State to judicial control.
3. State Courts have attempted to interfere with functions of the Federal Executive.
4. Federal Courts and State Courts have "attacked each other's processes and opened each other's prisons."

As these abuses consist in the improper exercise of judicial powers, it is obvious that there are but two remedies which can be applied.

I. That the Courts themselves should be brought to recognize the existence of the abuses, and should voluntarily recede from the positions which have led to them; and

II. Legislation—both Federal and State.

The first of these two remedies would, plainly, be advisory only. The means would be the creation of a sentiment at the bar and the expression of that sentiment by petitions or suggestions, with the hope that the desired effect would ultimately be produced upon the Bench.

Any movement in this direction must be a general one before it can become a successful one. It would be the slow movement of many years and many men. This Association and the various State and the Local Bar Associations which the past few years have brought into being, might give it important aid; but, though they were all united in the common effort, they could not hope by the mere force of protest or argument to create any immediate change in judicial habits of thought and action which have been the growth of more than one generation.

We are impatient, in this land of easy legislation, of such delays. The prompt remedy of a statute is always within our reach, and if the sentiment of the community will support it, it is the best remedy as well as the quickest.

Your Committee has no doubt that many of the abuses in question are fully recognized as such by public opinion. Conflicts between Courts, and contests between judicial and executive officers, are always distasteful to Americans. They do not belong to a land of Constitutional Government. Wherever they exist, they impugn the scheme of the Constitution or the manner of its administration. Wherever they exist, the people will be found ready to repress them, if they are shown the way to do it. The question, therefore, is what legislation is necessary and expedient, in order to accomplish the desired result.

Let us consider, a little more specifically, what the mischiefs complained of are.

And, first, the Federal Courts improperly interfere, by means of the writ, with the exercise of functions belonging to the Federal Executive.

The most noticeable and important class of cases in which this interference exists embraces those arising under extradition treaties and the laws passed to carry them into effect.

The scheme of extradition, as expressed in the provisions

of the act of Congress of August 12, 1848, contemplates (briefly) four stages in the process, viz., the issuing of the warrant by the judge or commissioner, the hearing before such judge or commissioner, the return of the testimony to the state department, and the order for the surrender of the prisoner by the Secretary of State.

Over this scheme or method of procedure the Federal Courts have asserted a supervisory power; and as this exercise of judicial power has resulted in certain abuses, the question is whether the power should be completely taken away, or whether its exercise should be merely circumscribed.

To abolish entirely the supervisory power on the part of the Federal Courts over proceedings for extradition would seem to be going too far. While, on the one hand, it may be admitted that the surrender of a fugitive from a foreign country may, and frequently does, give rise to diplomatic questions, the decision of which may be left to the Executive Department of the Government more properly than with the Courts, it must be conceded on the other hand, that the surrender should not take place without most careful examination by thoroughly competent judicial authority of the due observance of the processes pointed out by law. From the decision of the Commissioner in such cases, it would seem to be right that there should be one appeal—but no more—to a *Court*; but that such court should be so constituted as to give, on the one hand, every guaranty of its fairness and justice to the prisoner, and on the other hand, to the Government demanding the surrender, and to our own Government, every assurance that the requirements of international law and the obligations of the treaty under which the surrender is claimed, will be scrupulously observed.

The plan which suggests itself to your Committee is that an appeal from the decision of the Commissioner, if adverse

to the prisoner, should lie to the Circuit Court; and that at the hearing of the appeal the Circuit Judge and the District Judge should sit, or that provision be made for the calling in by either Judge of the other, or of the District Judge of an adjoining district, in important cases, the decision of the senior judge, in the case of disagreement between two District Judges, to control, with the right of certifying the questions of difference to the Supreme Court. The decision of such a Court, if adverse to the prisoner, would enforce the respect of all who were interested on his behalf; while if the Court should be of opinion that he be discharged, such discharge could not fairly be complained of either by the Federal Executive or by the Foreign State.

If, therefore, it were provided by act of Congress that the rulings of the Commissioner in extradition cases should be subject to review by such a Court, the law might safely provide, further, that the prisoner should not have the benefit of a writ of *habeas corpus* issued by any Federal tribunal. In this way, your Committee submit, the rights of the prisoner would be amply guarded; while the executive of the government would not be embarrassed in the discharge of diplomatic functions, but simply aided in that discharge by the advice of its own court.

The second class of abuses mentioned in Judge Thompson's paper embraces those cases in which "State Courts have attempted to subject the executive of their own State to judicial control."

The Committee, however, do not deem it possible to make any suggestions as to remedying abuses of this character. Their existence depends upon the relations between the Courts and the several executives, as adjusted by the constitutions and laws of each State; and no general plan for readjustment can be suggested. To enter into schemes

amendatory of the constitution and laws of all the states, would seem to be to go beyond the scope of the reference to the Committee as contemplated by the resolution.

There is, however, a class of cases in which State Courts interfere, not with the State executive in State matters, but with the executive of one State in discharging his duty towards the government of a sister State, which seems to call for some attention, and which may be noticed under this head.

This class of cases may be best illustrated by the decision of the Supreme Court of the United States made May 5, 1884, in *Robb vs. Connolly*, 106 U. S., 624.

In that case one Bayley was arrested in San Francisco by virtue of a warrant issued by the Governor of California, in pursuance of a requisition by the Governor of Oregon. Bayley thereupon sued out a writ of *habeas corpus* from the Judge of the Superior Court for the City and County of San Francisco, to which Robb (who was the officer empowered by the Governor of Oregon to receive Bayley from the Governor of California) made return that he held Bayley "under the authority of the United States," and as evidence thereof he produced a copy of the warrant from the Governor of California and his commission from the Governor of Oregon. He declined to produce Bayley, on the ground that the Superior Court of San Francisco had "no power or authority to proceed in the premises." For this refusal Robb was committed for contempt; whereupon *he* sued out a writ of *habeas corpus* from the Supreme Court of California. Upon a hearing the writ was dismissed, and Robb was remanded to the custody of the sheriff, the decision of the Court being put upon the ground that Robb should have at least obeyed the writ so far as to produce Bayley in Court, so that the Court might have inquired into the cause of his detention.

To this judgment of the Supreme Court of California, Robb took a writ of error to the Supreme Court of the United States. The Supreme Court of the United States affirmed the judgment of the Supreme Court of the State, not, however, upon the narrow ground on which the State Court had put its decision, but upon the broader basis that Robb, while acting under the authority of the Governor of Oregon, was *not* acting as a Federal officer, although he *was* acting by virtue of an authority conferred by the Constitution and laws of the United States; and, further, that the jurisdiction of the State Courts included the consideration and determination of questions involving authorities, rights, privileges and immunities derived from the Constitution and laws of the United States. In other words, the Supreme Court has decided, in this case, that it lies within the power of a State Court, by its writ of *habeas corpus*, to interfere with the action of the executive of its own State and with the agent of the executive of another State, both acting under and by virtue of a statute of the United States.

To make this case a still more apt illustration of some of the abuses referred to by Judge Thompson, we must notice another phase of it—for it had another phase—and (for Robb, the Oregon agent) a very important phase, too.

After Robb had failed to get discharged by application to the Supreme Court of the State, and, apparently, during the pendency of his writ of error from the Supreme Court of the United States, he sued out another writ of *habeas corpus*, going, this time, into the Circuit Court of the United States, and *that* Court discharged him! (See *in re* Robb, 19 Fed. Reporter, 26.)

We have, therefore, in this case, the spectacle of a double interference—the State Court staying the actions of the Governors of two states, and this ruling approved by the highest Federal Court—while an inferior Federal Court, in

its turn, ignores the process of the highest State Court and sets its prisoner free.

The remedy for this condition of things would seem to be either:

1. That the jurisdiction now existing in the State Courts over such cases should be abridged or taken away.

2. That the Federal Circuit Courts should be deprived of the power of issuing writs of *habeas corpus* in such cases; or,

3. That, from the action of the Circuit Courts in *habeas corpus* cases of this character, an appeal, and not a mere writ of error, should lie to the Supreme Court.

It would, no doubt, be eminently proper that the ultimate decision of cases of this sort should rest with the Supreme Court of the United States, for not only do the questions relate to authority given by the Federal Laws, but they assume, or may assume, the aspect of a contest between the authorities of two States. But the present condition of the docket of this Court, which has already been fully brought to the attention of the Association, admonishes us that appeals of this nature which, if granted, would be eagerly sought whenever the prisoner had friends or money, would produce more evils than they would cure. The desired result is now attainable, so far as questions of law are concerned, by writ of error. As to any review of questions of fact decided by the Circuit Court, this could hardly be considered, in view of our experience as to admiralty appeals and the policy we have been compelled to adopt as to them.

We are then left to choose, if any legislation in this particular can be had, between restricting or withdrawing the jurisdiction either of the State or the Federal Courts. It does not seem to your Committee that the original jurisdiction of either should be withdrawn.

Some Court must certainly be open to applications for this relief, and it should be whatever Court, competent to do justice, can be quickest reached. This will ordinarily be the Court of a State; but if either party prefers a Court of the United States, it would seem fully in accordance with the spirit of our more recent legislation to permit a removal of the cause before hearing, upon a proper showing that a constitutional question is involved, into the Circuit Court of the United States.

In the third place: State Courts have attempted to interfere with the functions of the Federal Executive.

Interferences of this kind, however, may be considered as things of the past. The cases of *Ableman vs. Booth*, 21 Howard, 506, and *Tarble's Case*, 13 Wallace, 397, would seem to have thoroughly settled the law, and the Federal Judiciary may, with confidence, be relied upon to protect the functions of the Executive of the United States from encroachments of State tribunals. The recent case of *Robb vs. Connolly*, 106 U. S., 626, already cited and commented upon, recognizes the correctness of the rule laid down in *Ableman vs. Booth*, and in *Tarble's Case*, and evinces no disposition on the part of the court to depart from that rule.

The last class of cases to be noticed embrace those in which the Federal and State Courts have claimed the right to interfere with each other's processes and do away with the effect of each other's judgments.

So far as respects attempts on the part of State tribunals to interfere with the execution of the writs or the enforcement of the judgments of the Courts of the United States, your Committee do not consider that any legislation is necessary. The decisions in *Ableman vs. Booth*, and in *Tarble's Case*, already referred to, cover cases of this description,

and the rule there laid down may be safely relied upon to forbid a recurrence of abuses of this character.

But the complaint that the process, judgments, and decrees of the State Courts are improperly interfered with by writs of *habeas corpus* issued by Federal tribunals is a just one, and the abuse still remains as a mischief in our jurisprudence which surely demands a remedy by the passage of an act of Congress, whereby it may be provided that when a prisoner, under a writ from a State Court, is discharged under a *habeas corpus* issued by Circuit or a District Court, an appeal may be taken by the proper State authorities to the Supreme Court of the United States. Possibly, also, a similar appeal should be allowed to the party in custody, if the decision of the Federal Court should be that he be remanded.

This, as it seemed to the Committee, may be supplied by so amending the existing statutes as to give the State or other public authorities interested in the case, though not a party to the record, the right to intervene and to have an adverse decision reviewed.

Allusion was made at the outset of this report to the possibility that the Courts themselves might correct the abuses complained of. This involves a wise and well considered course of judicial action which would derive aid and support from co-operation by the bar in the creation of a just sentiment on the subject. *Habeas corpus* cases necessarily require prompt and summary action and decision, and it would be of great value to the administration of this particular branch of justice if, by a common consent on the part of the bench and the bar, the boundaries and limitations of State and Federal jurisdiction could be more definitely determined. This result may, in some measure, be attained by increased interest on the part of the bar, especially in their

local associations, in reference to cases occurring within the jurisdiction of their own Courts.

The committee recommend the passage of the following resolution :

Resolved, That it be referred to the Committee on Jurisprudence and Law Reform, to prepare suitable amendments to the provisions of the Revised Statutes of the United States, relating to writs of *habeas corpus* to carry into effect the recommendations of the foregoing report, and to report the same to this Association at its next annual meeting.

All which is respectfully submitted.

WILLIAM ALLEN BUTLER,
SIMEON E. BALDWIN,
GEORGE TUCKER BISPHAM,
SKIPWITH WILMER,
Committee.

The Chairman :

What action shall be taken upon this report?

C. C. Bonney, of Illinois :

I move that the report be received, approved, and recommitted to the committee for such further proceedings, in accord with their recommendations, as they may deem proper.

The Chairman :

The adoption of the resolution, I suppose, is the more material. You will find it on page 9 of the committee's report.

Luke P. Poland, of Vermont :

The chairman of the committee made some allusion to me, and perhaps I ought to take the time of the Association for a very short time, as I have given considerable attention to this subject. The case that was decided in my own state two or three years ago—and one that is alluded to by Judge

Thompson in his paper—caused me to give some attention to it, before that paper was read. Some two or three years ago, a man had been convicted before the county court, which is a court of general jurisdiction, both civil and criminal—the highest court we have in our state where they have trials by jury. This man was convicted of passing counterfeit notes of a national bank, and sentenced to the penitentiary. He was brought out by a writ of *habeas corpus*, before the United States District Court Judge,—a most learned judge, by the way—and he was discharged, upon the ground that the county court had no jurisdiction over the offense. The result of that decision is, that the jurisdiction over the crime of counterfeiting, or passing counterfeit money, has wholly departed from state courts everywhere, because the same decision that he made in reference to the passing of counterfeit national bank bills would apply with still stronger reason to the only other kind of paper money we have—United States notes, and to United States coin. The decision was put upon the ground that Congress, under the revised statutes, at least, had given exclusive jurisdiction of that offense to the Circuit Court of the United States. He seemed to labor under some misapprehension that there was a kind of concurrent jurisdiction, or might be, over an offense that was created by a law of Congress. I might further say, that in our state, our legislature had expressly provided that counterfeiting, or passing counterfeit bills of a national bank, should be an offense against the state of Vermont. But I will not take any time to argue about the unsoundness of his decision. What troubled me in reference to it was, that the lowest class of federal judges, district judges, were thereby turned into courts of error, to overthrow the final judgments of the highest jurisdiction of the state; and from them there is no appeal. There have been other instances in other parts of the United States of far more flagrant cases

than this in Vermont. Within the last year, the United States District Judge in the state of Oregon, released a man who had been convicted and sentenced for keeping a gambling house, in violation of an ordinance of some town in that state. The man was brought before the judge on a writ of *habeas corpus*. The judge decided that the ordinance was invalid because it went beyond what the general law of the state authorized. But the way that he obtained jurisdiction, was by putting it upon the ground that the man was unlawfully imprisoned, because the ordinance was invalid, and, therefore, he was imprisoned in violation of the Fourteenth Amendment of the Constitution.

That interpretation would give to a United States judge the most unlimited jurisdiction. So I gave my attention to this subject in the last session of Congress, and considered a good many ways of reaching the difficulty, but I finally satisfied myself that all that could practically be done was to restore the appeal to the Supreme Court of the United States, which was given by this broad act of 1867.

How many of you gentlemen have had occasion to look into this *habeas corpus* history, I do not know. Up to the year 1833, the jurisdiction of United States judges and courts in matters of *habeas corpus* was very limited. It was limited wholly to cases where persons were in custody under process of the United States courts. In 1833, the time of the nullification difficulty, by an act that was then passed, this jurisdiction was given to the courts of the United States to relieve United States Revenue officers who had been prosecuted for acts done as officers, in state courts. There was no further alteration or extension of the jurisdiction, until after the McLeod difficulty in this state, when an act was passed, providing for cases of that sort. But none has ever arisen since then that I have heard of. It ran along until after the war was over. In 1867, Congress passed an

act which, very broadly, extended the federal jurisdiction. It was extended to all cases of imprisonment of "persons in custody in violation of the Constitution, or of any law or treaty of the United States," and all difficulties that have been pointed out by Judge Thompson, and by the report of our committee, have grown up under that act.

I had something to do with the passage of that act. It was deemed necessary at that time, and probably was necessary in certain portions of the country, that the judges and courts of the United States should be vested with all the jurisdiction that could be given to them under the constitution; but it was known that that jurisdiction might be very widely extended. Therefore, that act of 1867 provided that where a case was brought before a single judge, an appeal should be to the next regular term of the circuit court in that district, and that from the decision of the circuit court, an appeal should lie to the Supreme Court of the United States. Within a year after the passage of that act, there came up the famous case of *McArdle*, who was imprisoned in Mississippi under an order of some military governor, and took out a writ of *habeas corpus* before the district judge, who decided against him. He appealed to the circuit court with the same result. From there he appealed to the Supreme Court. After the case was argued in the Supreme Court, and while the court held it under advisement, that portion of the act of 1867, which allowed an appeal to the Supreme Court, became very suddenly repealed, and that court held that the repeal operated upon that case.

Since that time—since the decision of these inferior federal judges has been left to be final—they have lived up to the old saying of a good judge, that he "enlarges his jurisdiction."

Accordingly, I introduced a bill in the House last session, which was referred to the Judiciary Committee, was unani-

mously reported by that committee, and passed the House unanimously, and has been reported in the Senate favorably by the Judiciary Committee. If it had not been reported so near the end of the session, it would undoubtedly have passed the Senate. I have no objection to the resolution that this committee have reported. I have advised all that I thought could be done on this subject, and have got it well on to completion.

John F. Dillon, of New York :

How will it stand then—the act of 1867—with your supplement?

Luke P. Poland :

The act which I introduced restores the act of 1867 as it was originally passed.

• John F. Dillon :

Will you read it, if it is there before you?

Luke P. Poland :

I have merely the Revised Statutes here.

John F. Dillon :

I mean the clause under which the federal judges feel at liberty to make that examination.

Luke P. Poland :

Appeals from a single judge to the circuit court were left undisturbed. It was only the appeal from the circuit court to the Supreme Court which was repealed. The act that has been passed by the house is as follows: "From the final decision of any court, justice, or judge inferior to the circuit court upon an application for a writ of *habeas corpus*, or upon such writ when issued, an appeal may be taken from the circuit court for the district," etc., etc. [Reading the act.] That is the provision in the act of 1867. Then the second case where an appeal is allowed is under the act that was passed growing out of the McLeod case. Then follows (R.

S., p. 764): "From the final decision of such circuit court," etc., etc. It does not apply to the first clause of the section, but to the second clause, which is the McLeod section. The bill that has been passed, merely makes it apply to both sections instead of to one. If the Association can apply a remedy which will do any better than restore that appeal, I shall co-operate with you.

C. C. Bonney, of Illinois, said:

It seems to me now that the motion which I offer after the explanation made by Judge Poland, is precisely what we ought to pass. It was, I believe, in these words—That the report be received and approved, that the subject be recommitted to the committee with directions to take such further proceedings in conformity with their recommendations as they may deem expedient. That motion would leave it for the committee to propose any supplementary act, or to concur in the act of Judge Poland. I would therefore ask a vote on my motion.

The Chairman:

Do you mean by that, the adoption of the resolution?

C. C. Bonney:

Practically, it does.

James O. Broadhead, of Missouri:

I second the motion.

Henry C. Semple, of Alabama, said:

Before that motion is put, I should like to make an objection. The motion if adopted will commit the Association to the views of the committee as expressed in this report. The objection is that I did not hear the report which was read, and have not had time to examine it for myself, and I do not think that any member of this Association who has heard this matter now for the first time is,

perhaps, any better prepared to form an intelligent judgment upon it than I am. Those who have studied this specially, of course, are prepared in reference to it. I think, and I submit with great diffidence, that it would be better to adopt the resolution of the committee without any approval of the report, because we cannot tell until we see the act framed whether we approve it really or not. I think it was Lord Coke who said to His Majesty, when called for an opinion, "Sire, if you should ask me for my opinion as to a question of common law, I should be ashamed if I could not give it to you without reflection; but if you ask my opinion upon an act of Parliament I should be ashamed to give it to your Majesty without reading it." So we are called upon here to pronounce beforehand upon the advisability of the adoption of an amendment to the act of Congress upon one of the most important subjects. I now move, as a substitute to the resolution offered by the gentleman from Illinois, that the resolution of the committee be adopted, and, in addition, that the committee be requested when they have framed the proposed legislation to have it printed, and that the secretary be requested to send a copy of it to each member of the Association before the next meeting.

Alexander R. Lawton, of Georgia.

Seconded the motion of Mr. Scuple.

C. C. Bonney, of Illinois, said:

In the light of the explanation made by Judge Poland, the resolution reported by the committee, which at the time of their report seemed to be just what was required, does not seem so now, since it may be that the committee will entirely concur in the action which has been reported as a supplement to their report by Judge Poland. It therefore seems to me that the resolution which was offered by me more clearly meets the case, although in that matter I

should defer entirely to the better judgment of the chairman of that committee. If, however, it will remove objection and save delay I should be quite content, with the consent of the seconder of my motion, to withdraw the words "and approve."

Henry C. Semple, of Alabama, said :

I withdraw my motion of a substitute, if that be amended as Mr. Bonney says, with the proviso that it be printed and forwarded to each member.

C. C. Bonney, of Illinois, said :

And I will add the words, "And that such action as they may take be sent to each member of the Association before the next meeting."

Alexander R. Lawton, of Georgia, said : I ask for the reading of the resolution with any amendment that is offered.

The Chairman :

Mr. Bonney proposes to rewrite the amendment, and he will then read it altogether.

R. T. Merrick, of Washington, said :

How would it do to say, "It is the sense of the meeting that the act of 1867 be restored." That act was repealed for the purpose of preventing the exercise by the Supreme Court of the jurisdiction on appeal which it gave to the Supreme Court in the particular case of *McArdle*, and was repealed after that case had been argued. It was a wise act, and I am inclined to think that we can rid ourselves of the complications that have arisen this morning, by voting to advocate the restoration of the act of 1867.

B. A. Willis, of New York, said :

I second the motion.

William Allen Butler, of New York :

The committee think they can rid themselves of a great deal of labor by cutting this knot in the way proposed. At

the same time we must not overlook the action taken by this Association last year, and the duty which was then imposed upon this committee. We had a very able and interesting paper read by an eminent member of the Association upon this particular subject, and he pointed out certain specific mischiefs which seemed to require remedy, and then the Association referred that paper to the committee, of which I am chairman, with a positive direction to submit to the Association, at this meeting, suggestions of remedies for those specific evils. Under that direction the committee was bound. Accordingly we looked into this subject and we found that as to one of these suggested mischiefs it did not appear worth while to attempt any remedy. As to the others we made suggestions which seemed pertinent to the subject, and, as the Association will perceive, to carry out these suggestions some amendments to the Federal statutes were required, and we then asked leave, by our resolution, to put these amendments into shape and to report them to the Association. My friend, who offered the substitute for the resolution offered by Mr. Bonney, will perceive that the utmost that the committee suggested was that whatever recommendation they might make in the shape of an amendment to the existing law, should simply be drafted and submitted to the Association at the next meeting. Now, after getting here, we were apprised for the first time of this act in Congress. Of course it has not matured into the passage of an act, and we cannot therefore be disposed to follow it very strictly. Judge Poland informed the committee for the first time, when we got here, of this proposed legislation and the stage it had reached. Of course that follows, as far as it goes, the recommendation of the committee; and if the Association shall be satisfied with that, as Judge Poland appears to be—that that is as far as it is worth while to go, then the passage of a resolution

directing co-operation in the passage of that act, will end this whole subject, and the committee will be discharged. All I ask is, that our relation to the subject may be defined by the present action of the Association in the light of what has already been done, and if the Association is prepared now to make a finality of this subject by approving of the passage of the act introduced by Judge Poland, well and good, and then the committee will be discharged of the whole subject.

James O. Broadhead, of Missouri, said :

I was with Judge Poland on the committee on which the bill introduced by him was reported. It was referred by the Judiciary Committee to a sub-committee, consisting of Judge Poland and myself. We examined the subject and came to the conclusion that all we could hope to accomplish was the restoration of the provisions of 1867, or so much of it as had been repealed, for the purpose of getting rid of the *McArdle* case. All that was repealed, according to my recollection, was the right of appeal to the Supreme Court of the United States. That right of appeal was taken away by Congress. We thought all we could expect to accomplish would be the restoration of that right of appeal. That passed the lower House of Congress, has gone to the Senate, and has been reported by the Judiciary Committee of that body, and doubtless will become a law. That meets the recommendation of this committee, as I understand it, contained in the last suggestion. Now, so far as the previous part of this report is concerned, I have not read it, and did not hear distinctly whether any suggestions were made, or whether, when the recommendations of the committee are referred to in this committee's report, it refers to any further act proposed to be passed to meet that suggestion, and, therefore, I am in the dark in regard to the passage. But so far as the recommendation of restoration of the act of 1867 is

concerned, I think, substantially, the act I refer to does restore that act. If it does not, it ought to be done, and I, therefore, would vote for this recommendation to restore the act of 1867. So far as the other recommendations are concerned, I am not prepared to vote upon them. So far as my own opinion is concerned, I was in favor of the restoration of the act of 1789, the first judicial act, the effect of which was to take from the federal court all jurisdiction in *habeas corpus* cases, every imprisonment made on the authority of the state tribunal. In other words, the federal acts were confined in their jurisdiction to cases of imprisonment under federal process, making a broad distinction between the authority of the federal judiciary and the state judiciary. The first amendment, as suggested by Judge Poland, was made in 1833, in order to prevent imprisonment by the state authorities. Then when the McLeod case came on, there still was another amendment. Then the act of 1867 was passed, which gives the right of appeal in all cases to the Supreme Court of the United States, but does not restore the provisions of the act of 1789. We thought all we could accomplish would be the passage of an act which would, in effect, restore the act of 1867. That is what I am in favor of. I don't know that we need any other, unless we wish to take the strong ground of going back to the provisions of the judiciary act of 1789. I am in favor, therefore, of approving the restoration of the act of 1867.

R. T. Merrick, of Washington, D. C.:

I am very glad to hear the explanation of Mr. Broadhead, because it supplements my suggestion very effectively, and shows that all we can probably do now is what I propose to do in the resolution that I offer. I will, therefore, now add to that resolution, that all other matters and suggestions contained in that report be recommitted to the committee,

and that they be instructed to report thereon at the next meeting. So that we may accomplish, or help to accomplish, what these learned gentlemen in Congress tell us may now be accomplished, viz., the restoration of the right of appeal given by the original act of 1867. And having done that, we may then see at the next meeting, whether we cannot accomplish that desirable severance of jurisdiction between the state and federal tribunals, and going a little further, acting wisely upon the maxim of going slowly and accomplishing what we can.

The Chairman :

Do you make your motion as a substitute for the resolution offered by the committee?

R. T. Merrick said :

It is a substitute for whatever is now before this body ; that the committee be instructed to represent the Association before Congress in advocating the passage of the bill now pending, which will restore the act of 1867 ; and, secondly, that all other matters be recommitted to the committee with instructions to report thereon at the next meeting of this Association.

Alexander R. Lawton, of Georgia, said :

I think the policy of this Association tends to give respect to the standing committees. I should be very glad to know whether the substitute that is proposed would meet with the sanction of the chairman of that committee.

R. T. Merrick, of Washington, said :

I felt very confident that it would.

Alexander R. Lawton, of Georgia, said :

My friend from Alabama remarked that the Association was not prepared to vote upon this matter, because a great many of them had now heard of it for the first time. In the

changing character of the attendance upon this Association that is necessarily so at every meeting, and we could never act upon anything if every member present had to be thoroughly informed of what had passed at the previous meetings. Hence it becomes important if we wish to do anything to give heed to the solemn reports of the regular committees, and especially a committee which has shown itself to have done its work as carefully as this has. Hence, I take leave to ask whether that substitute would not meet with the approbation of this committee in lieu of the action they proposed. If it does, I think it would be a perfect solution, probably, of the whole matter, so far as I am informed.

S. O. Griswold, of Ohio, said :

The adoption of this resolution commits us to nothing except to the approval of the work of the committee in that direction. Therefore, it is committing us to no special action at all, but we simply approve of the work of the committee so far as they have gone, and whatever suggestions, in the way of suggestions, are to be submitted to the next meeting of this Association for approval. Therefore, I see no reason at present for offering the substitute. If we simply pass this resolution on this subject, approving what they ask, then another suggestion that the gentleman from St. Louis has made, can be adopted, approving what Judge Poland has done.

William Allen Butler, of New York, said :

I think I can speak for every member of the committee when I say that our only purpose, of course, is to serve the general end that brings us all here, as declared in our constitution, "to promote the administration of justice." I may be pardoned for calling attention to the fact that we have some six or seven standing committees upon our list, and

here is one single one—our committee—expecting to report. Now, as I say, this subject was a novel one, and was introduced by an important paper. It was referred to our committee, with a positive direction. Now, what becomes of the report, or of the recommendation, is solely a matter for the Association. I take leave to say, in answer to a suggestion of Mr. Broadhead, that we do propose, in the earlier part of the report, a change in the present mode of administration, in this report. We had a case in New York the other day—that of Tully—which has excited a good deal of attention. He was a defaulter of the funds of a bank entrusted to him, and he came to New York. He was arrested for extradition, and Commissioner Osborne, a very experienced and careful magistrate, committed him. He appealed to the district judge, and Judge Brown reversed the decision and set the man at liberty. We have suggested that in a case of this description it is hardly safe that the ultimate appellate jurisdiction should be vested in a single district judge. This is an important subject. We are here to consider subjects of importance all over the country. I venture to suggest that here is a subject of very great practical importance, whether it is safe or wise to leave so great a power in the hands of a district judge, whether there ought not to be, as we suggest, an amendment of the revised statutes, to give the right of review to a court composed, as we suggest, of the district or circuit judges—a court that shall really be an appellate court. It is possible that, on reflection, the Association might think it worth while to attempt some amendment in that respect. In regard to the particular subject to which the act of Congress refers, I think, as it turns out here, that a remedial statute is already in course of passage, and likely to become a law, it is very proper, and I think the committee would be very glad, to accept the views of the Association in that respect; that the Association, at once, instruct the

committee, as I understand the resolution of Mr. Merrick, to co-operate on behalf of the Association, to secure the passage of that act; and then, if the other matters, including that to which I have referred, are re-committed to the committee, I think that would be proper.

C. C. Bonney, of Illinois, said:

I think that the state of the question before us is not quite clearly conceived. No motion has been made to adopt the report of the committee. With the concurrence of its chairman I offered a resolution which the Association has not yet heard.

The Chairman:

I put the question directly whether you intended your resolution to adopt the report of the committee.

C. C. Bonney:

Then Mr. Merrick moves a substitute, not for the resolution reported by the committee, which was not before the house, but for my resolution. While I was writing the changes which had been agreed upon between the mover of this resolution and other members, the substitute was moved, since which this resolution has not been read. I conceive that there is one very wide difference between Mr. Merrick's substitute and my own. That simply dismisses this committee. This pending act in Congress is not passed yet. Whether it ever will be passed is problematical. The only substantial difference between the suggestions made by the gentleman from Missouri and the gentleman from Washington, were these. My resolution continued the matter in charge of the committee to render such aid, and do such things as they may find expedient or proper; and, if they make any new amendment, to send it to the members of the Association, as the gentleman from Alabama requested. With the chair's permission I will read the resolution as it now stands:

“*Resolved*, That the report of the Committee on Jurisprudence and Law Reform be received, and that the matter be recommitted to the committee with instructions to take such further proceedings in accordance with their recommendations as they may deem expedient; and that the committee be requested to send a copy of any statutory amendment they may prepare to each member of the Association, prior to the next meeting of this Association.”

This resolution carefully avoids pledging the Association to the restoration of the act of 1867, merely because the Association might want to do something more, or different. I think the wisdom and discretion of this committee has been sufficiently proved in former years that we may still be willing to trust them.

R. T. Merrick, of Washington, D. C., said:

Mr. Chairman, Mr. Bonney, has offered a resolution. I have nothing to do with the resolution reported by the committee. I don't want to vote it down, or approve it at all. As a substitute for Mr. Bonney's resolution I offer the following:

“That the committee be instructed, on behalf of this Association, to advocate the passage of a bill, by Congress, restoring the right of appeal in *habeas corpus* cases to the Supreme Court as given by the act of 1867. Secondly, That all other matters and things in the report of the committee be recommitted to the committee with instructions to report thereon at the next session of the Association.”

The Chairman:

I will take a vote upon Mr. Merrick's substitute.

The substitute was then adopted.

The Chairman:

The question now is upon adopting Mr. Merrick's motion, and referring the matter back to the committee.

A vote was thereupon taken, and the motion was announced by the chair as adopted.

The Chairman:

The report of the Committee on Judicial Administration and Remedial Procedure is next in order.

R. T. Merrick, of Washington, D. C.,

On behalf of that committee, said, I beg to ask the Association until to-morrow to make a report.

C. C. Bonney, of Illinois:

The Committee on Legal Education have nothing to report at present.

[The respective chairmen of the Committee on Commercial Law, and the Committee on International Law, announced that they had no reports to submit.]

The Secretary announced that the Committee on Publication, and the Obituary Committee, would make their reports in print.

From the Committee on Grievances there was no report.

Simeon E. Baldwin, of Connecticut:

Before the business of the standing committees is disposed of I have a resolution of reference that I should be glad to bring before the Association, with a desire of securing a report next year from the distinguished committee of which the gentleman from the District of Columbia is a member. It is in regard to the familiar subject of the relief of the Supreme Court, but it is designed to approach the subject from a different side from that which has been hitherto made the subject of the attention of the Association. A distinguished member of the Association, who is also a member of the national Congress, tells me that a measure is before that body which seeks to relieve the Supreme Court by cutting off a portion of the business that comes to it from

the District of Columbia and from the territories. The present statutes, gentlemen may recollect, allow appeals from the Supreme Court of the District of Columbia to the Supreme Court of the United States in cases involving a pecuniary amount much less than that required for appeals from the several circuit courts to the Supreme Court. A similar discrimination against the states exists in favor of the territories. If a man has a controversy in a court in a territory, involving a trifling pecuniary stake, he may try his case before the circuit court of the territory and before the Supreme Court of the territory sitting *in banc*, and may then again take an appeal to the Supreme Court of the United States. And I am informed that one out of four of the cases which may be disposed of by the Supreme Court in a year, may come from that source; or, to state it otherwise, I am told that seventy-five cases a year is a fair average for the cases that come up from the territories and the District of Columbia to the Supreme Court, which might be cut off if the territories and the District of Columbia were put upon the same ground as the states, and an appeal refused unless \$5,000 was involved. I think it is a subject we ought to investigate, and therefore I offer the following:

Resolved, That in the opinion of this Association no sufficient reason exists for continuing the discrimination in favor of the territories and the District of Columbia, created by the existing statutes, granting an appeal from their courts to the Supreme Court of the United States in ordinary causes involving less than \$5,000. That the foregoing resolution be referred to the Committee on Judicial Administration and Remedial Procedure, to be reported on at the next annual meeting, and that the committee be requested to transmit their report to the secretary, for printing and distribution, not later than July 20, 1885."

It will be perceived that the resolution goes to the com-

mittee as a mere matter of reference, and that they are requested to transmit their report to the secretary, to be printed, on or before July 20th, of next year, and the secretary will then distribute it.

Alexander R. Lawton, of Georgia, said:

Make it June 1st.

Simeon E. Baldwin, said:

It may not be possible for the committee to get together again until the vacation season of next year, which, with some lawyers, begins the first of July.

Walter George Smith, of Pennsylvania:

I would like to call my friend's attention to the fact that last year the Committee of the Law Association of Philadelphia, having the matter of the measures proposed for the relief of the Supreme Court under consideration, sent a committee to this body to state what they had done, and to submit for its consideration a report which had been prepared and read before the Philadelphia Association. That report, upon motion of Mr. Vaux, was referred to the Committee on Judicial Procedure. I find, on looking at that report, a copy of which I have in my hand, that this very evil of which Mr. Baldwin complains, or to which he desires the attention of this Association to be especially drawn, has been particularly set forth therein. It has, therefore, been under consideration during the past year. Here I have statistics showing the number of cases in certain reports of the Supreme Court, showing their origin from all the states and territories, the number of patent, copyright cases, etc., making a careful analysis of the amount of time required by the court in passing upon and deciding them, and calling particular attention to the evil effects of the discrimination in favor of the territories and the District of Columbia in the money limit of appeals. Now, Mr.

Chairman, if Mr. Baldwin's resolution will have the effect of abating one of the evils of the pressure of business, well and good, but it does seem to me somewhat superfluous. When I call to mind that very brilliant debate upon the subject of the relief of the Supreme Court, to which this Association listened with so much interest two years ago, and when I remember that this matter has been already referred to one of the standing committees of the Association, I think we are giving too much dignity to one of the minor details, by a special reference. I move, therefore, to lay this resolution over until to-morrow, when the report of the Committee on Judicial Procedure will be presented, and we shall know exactly what has been done upon the subject. If nothing has been done by that committee, it may then be the wish of the Association to consider this, and the other causes of the delays in the Supreme Court, at once.

R. T. Merrick, of Washington :

I second Mr. Baldwin's motion so as to bring it regularly before the meeting; I want to say that should the subject come up for discussion, I am quite confident I can show good and substantial reason for this difference in the specification of the amounts made requisite in case of appeal from the states, and that from the territories and the District of Columbia; and I would ask the gentleman to modify his resolution so that it should simply say that the subject be referred to the committee, instead of using the equivocal language in which it now is. And I would say for myself, and for the bar of the District of Columbia, that we are clearly of opinion that it would be a gross injustice to litigants in that district, under existing circumstances, and possibly under any circumstances, to cut off, or in any way abridge, their right of appeal to the Supreme Court of the United States. And, I hope that gentlemen of the Associ-

ation will examine the subject before they make up their minds about it. Will the gentleman modify his motion as I suggest?

The Secretary asked

Whether Mr. Smith's motion to lay on the table until to-morrow morning had been seconded.

John F. Dillon, of New York:

I second it.

A vote was then taken upon Mr. Smith's motion, to lay on the table until to-morrow morning, the resolution of Mr. Baldwin, and it was adopted.

The Chairman said:

Miscellaneous business is now in order.

Austen G. Fox, of New York, offered a resolution as follows:

"Resolved, That so much of the Annual Address as refers to the evils of the system of reporting the decisions of the courts be referred to the Committee on Judicial Administration and Remedial Procedure, with a request that they report at the next annual meeting of the Association."

William Allen Butler, of New York, seconded the motion, and it was adopted.

The Association then adjourned until 8 o'clock, P. M.

Evening Session, Thursday, August 21st.

L. P. Poland, of Vermont, presented the names of three gentlemen recommended by the General Council for election as members of the Association, and, no objection being made thereto, they were declared members. (*See List of New Members at the end of the Minutes*)

The Chairman :

The business of the evening will begin with a paper by Mr. Collier, of St. Louis—as he appears to be according to the programme, though he now resides in New York. After which we will listen to a paper by Mr. Simon Sterne, of New York. I now introduce Mr. Collier.

Mr. Collier then read his paper. (*See Appendix.*)

The Chairman :

I introduce, with great pleasure, to the Association, Mr. Simon Sterne.

Mr. Simon Sterne then read his paper. (*See Appendix.*)

W. H. H. Russell, of New York, said :

I move that the discussion upon the two papers read be deferred until to-morrow morning, at 11 o'clock, as I am sure that the very able address of Mr. Sterne will be of interest to our president, inasmuch as he recommended biennial sessions of legislatures.

James O. Broadhead, of Missouri, seconded the motion.

R. Wayne Parker, of New Jersey, said :

I hope this motion to postpone will not prevail. We are all here and are greatly interested, and I should feel very glad if we could at least open discussion on the subject to-night.

David Dudley Field, of New York, said :

I perceive in the programme that miscellaneous business is up for to-morrow, by which, I suppose, is meant that the discussion of any proposition that is brought forward will be in order. How much of this there may be I don't know, but for my own part I desire to bring before the Association a particular subject, and ask for the appointment of a special committee. If this discussion which is asked to be postponed until to-morrow is to cut off that, why I beg that it

may go on to-night. However, my object in rising is to ask what is the programme for to-morrow.

The Secretary said :

To-morrow the nomination and election of officers will be made. That will be the first thing. Then will come miscellaneous business. If the General Council have done their duty well, the election of these officers will be made without any long delay.

David Dudley Field, of New York, said :

We are to presume that the committee has done its duty well; and, if so, the election of officers will not take more than a very few minutes?

The Secretary :

No—not more than a few minutes.

David Dudley Field, of New York, said :

Then there is to be nothing before the Association to-morrow but general discussion.

Walter George Smith, of Pennsylvania, said :

I would call attention of gentlemen to the fact that Professor Baldwin's resolution has been laid on the table, with the understanding that it will be taken up to-morrow, when Mr. Merrick will make a report from the Committee on Judicial Administration and Remedial Procedure.

Charles A. Peabody, of New York, said :

I move an amendment to the resolution of Mr. Russell, that the matter be laid over until the session of the Association at ten o'clock to-morrow, and then not necessarily to be proceeded with at that hour.

W. H. H. Russell, of New York :

I accept the amendment.

The motion, as amended, was then adopted.

Adjourned to 10 o'clock A. M., on Friday.

Friday Morning, August 22d.

The President having called the meeting to order,

Luke P. Poland, of Vermont, said:

The General Council nominated for admission as members of the Association, several gentlemen, all of whom were duly elected. (*See List of New Members at the end of the Minutes.*)

The President:

The first business in order is the nomination of officers.

Luke P. Poland, of Vermont:

I am instructed by the General Council to report the list of officers agreed upon for the coming year.

(*See List of Officers in Appendix.*)

Skipwith Wilmer, of Maryland:

I move that Alexander Hamilton be added to the Local Council for Virginia. He is the only representative for that state here present.

Charles A. Peabody, of New York, seconded the motion, and it was adopted.

The President:

Are the nominations you have heard read, for officers of the Association, ratified? All in favor of so doing will say "aye!"

The nominations were ratified by a unanimous vote.

(*See List of Officers at end of Minutes.*)

E. F. Bullard, of New York:

I move that the name of J. M. Dudley be added to the Local Council from New York:

Charles A. Peabody, of New York, seconded the nomination, and Mr. Dudley was elected.

The President:

The next thing in order is miscellaneous business.

W. H. H. Russell, of New York, said:

In order to bring the paper of Mr. Sterne before the Association, I move the following:

“Resolved, That the very able and valuable paper read by Simon Sterne, Esq., of New York, last night, be referred to the Committee on Jurisprudence and Law Reform, with the instruction that they report, at our next meeting, upon the important suggestions therein contained.”

William Allen Butler, of New York, said:

I second the motion. In order to show something about the importance of some of the questions treated there, I desire to call attention to a specimen of one of the evils arising from legislation in this country—I refer to that statement where he says, in substance, that a great deal of special legislation is worked through legislatures under the form and guise of general legislation. As a specimen of that I think we have a most clearly defined one in Section 1,440 of the New York Code of Civil Procedure. In order that the Association may understand how such a thing may be done, I beg leave to read the section. The objectionable legislation occurs in the amendment to that section which was adopted with the code in the first instance. The section as first adopted read: “The right and title of the judgment debtor, or of a person holding under him, or deriving title through the real property sold by virtue of an execution, is not divested or sold until the expiration of the period within which it can be redeemed as prescribed in this article and the execution of the sheriff deed; but if the property is not redeemed when a deed is executed in pursuance of sale, the grantee in the deed is deemed to have been invested with the legal estate from

the time of the sale"—so far as I have read, is the original section, but here comes the amendment: "and if the title of such grantee or his assigns is adjudged, for any reason or cause whatsoever, to be null and void in any action for that purpose brought by the judgment debtor or his assigns, such judgment shall have no force or effect unless within twenty days after the entry of such judgment, the plaintiff shall pay to such grantee, or his assigns, the sum of money which was paid upon the sale, with interest from the time of the sale as prescribed in this article, including the costs and expenses of said defendant in defending the action in which said judgment was recovered to be adjusted by a judge of the court in which said action was brought, and in the event of the plaintiff's failure to pay such purchase money and expenses within the time aforesaid, said title shall be valid in said grantee, and in such case, and in case judgment has heretofore been recovered and appeal has been taken therefrom which is now pending, and said judgment shall be affirmed upon final appeal, the same shall have no force or effect unless within twenty days after the entry of the judgment of affirmance, the plaintiff shall pay to such grantee, or his assigns, the sum of money which was paid from the sale, with interest as aforesaid, including the costs and expenses of the defendant as aforesaid in prosecuting any appeal from said judgment, and in the event of plaintiff's failure to do so said title shall be valid in said grantee." Now, you will see that if some gentleman chose to go to Europe for six months, and he comes back and finds his homestead sold upon a void judgment, and purchased in by some person, he may bring an action to set aside the sale, but before he can get his property back he has to pay the amount of the bid and the costs of the action which the defendant has incurred and the costs of appeal, or else his property is gone. Now, what may be the con-

struction of this section when it comes before the court I don't know, but as it stands no man can get his property back when sold under an execution, no matter how void, without paying the purchase money. That is a specimen of special legislation, and undoubtedly was carried through by somebody having a case to which to apply it.

C. C. Bonney, of Illinois, said:

I desire to offer a few suggestions in relation to the paper on "Defective and Slipshod Legislation," read by Mr. Sterne last evening. It is a subject which can hardly have failed to attract the attention of every practicing lawyer. It is impossible to exaggerate the evils which flow from the source to which that paper refers. We all listened with deep interest to the presentation of the subject made by the learned author. In the main I concur with the views which he expressed. No matter whether the suggestions made be precisely those which the future shall deem wise enough to carry into effect, they will attract the attention of the profession and the public, and promote the desired end. The reform of a great evil is not a holiday matter, but a serious, and oftentimes a long and painful undertaking. Let us confront this subject as it deserves. It is time not only to speak with the vigor of the paper to which I refer, but the time has come for serious and sober action by our profession.

Some difficulties to which the paper does not refer confront us. We are met at the outset with an almost universally erroneous public opinion on the subject of legislation. Until we meet that difficulty, until through the voice of the profession, which alone can act in this matter in the first instance, the public opinion on the subject of the qualifications of legislators and their duties is corrected, all hope of any effective remedy must be vain. Not only is

public opinion seriously at fault at this time, it has always been wrong from the founding of the government down to this hour. We have waited a century to begin the vast work, which none of us should underrate, of correcting that erroneous public opinion.

And that is not the only difficulty. When we attempt to set public opinion right in regard to the matter of defective and slipshod legislation, the proposed reform will be combatted by every corrupt influence which seeks to pervert the offices of the government to its purposes. The moment the profession raises its voice in behalf of reform of this great evil, every demagogue who seeks public favor by appeal to the lowest instincts of men, will raise an outcry against the expense required to frame and enact proper legislation. Mr. Sterne's paper set forth with some distinctness of detail the method of procuring private legislation in the mother country—that counsel are employed to inspect the bills, and to oppose their passage if not consonant with the public welfare. But if such a plan were instituted here, what an outcry would at once be raised against it! There is but one way to meet evils of this kind: the profession must raise its voice in denunciation of things which it cannot approve, and not sit idly by.

The fundamental error, out of which grows the erroneous public opinion to which I have alluded, springs from the fact that in the founding of our government we obliterated the hereditary governing class, but substituted nothing in its stead. Amid the trials of that early day there was a spontaneous response to the demands of the country which resulted in the admirable early legislation which is still the delight of every student of the law; but as the country advanced in its growth, and its interests were developed, we forgot that we had made no substitute for the hereditary governing class of other countries, and that, from its

nature, the patriotic charity of voluntary and self-denying service must be temporary. Although we recognize in all private callings the necessity for study and experience and practice—nay, in one of the great departments of our government we recognize the necessity of long study and experience to fill the judicial bench,—still, when we come to the no less difficult and important matter of legislation, we take it for granted that all men are endowed by nature with the high genius required for the framing of statute law.

Not only is this the case, that the governments, state and national, have never, up to this hour, made any provision for professional and skilled labor in the matter of statute making, but we have committed another folly to which public attention should now be called. Because in the mother country there is a House of Lords, and because in the Congress of the United States there is a Senate to represent the equal rights of the states, therefore it seems to have been assumed that there must necessarily be a Senate and House of Representatives in the State Legislatures, and yet both of those bodies are characterized by the same principles of organization and office. This should not be so. Evidently there has always been a feeling latent in the public mind, as well as in professional judgment, that there should be two legislative houses for some purpose, but that purpose has not been clearly discerned, or, if discerned, it has not been clearly defined. What, then, can be suggested in this behalf? It is this: in contributing the results of experience, in acting on a matter of public policy, the judgment and suggestion of the blacksmith, the farmer, the merchant, the banker, are just as much entitled to respect as those of the highest scholar or professional man. As to the mere matter of discussing public policy, and deciding whether a measure of a particular kind is required, an

assembly of men drawn fresh from the people, and representing every class in the community, and every interest in the state, is the proper body to determine such questions, and they ought, in my judgment, to be determined, as has sometimes happened in this country, and not infrequently in the mother country, not on the details of a statute, but upon a simple resolution of inquiry whether or not the proposed legislation ought, or ought not, to be enacted in the State.

Then, above this body of popular representatives should sit the Senate, to take the measures which the popular judgment has approved, and embody them in the clear and exact provisions of a well-drawn statute. Statute-making is not only strictly professional work, it is the very highest order of such work. The text book of Story on Equity Pleadings tells us that the drawing of a well constructed bill in equity requires great accomplishments, and the endowments which belong only to highly gifted minds, and yet that is a summer-day pastime compared with the difficult task of framing a wise and well constructed bill for enactment into a law by the legislature. Because the bill in equity deals only with the facts which exist, while the statute maker must look into the future, and endeavor to perceive the various contingencies and difficulties which may arise. Hence I suggest, in addition to what was set forth in the paper of the gentleman from New York, that we will find the best skilled body for the delicate work of statute-making, and the effective prevention of "defective and slipshod legislation," in a slight reconstruction of the Senate, in our various state legislatures, by making them consist only of experienced professional men, assimilated in tenure and compensation to the judiciary.

There is little more that I care to say, but among the things which escaped my attention for the moment, and of

which I made a brief note while listening to the paper last evening, was this: We have never had in this country any *standard* of the civil service, legislative, executive, or diplomatic. We have standards of judicial and legal procedure. We have standards of army and naval service. We have the naval academy and a military school, in which are trained, continually, young men drawn from the congressional districts of this great nation. I desire to call attention to this great omission. I have long thought what I now declare, that to make the system of government complete there should stand also, side by side with the naval and military academies, a **CIVIL SERVICE ACADEMY**, in which the arts of statesmanship and diplomacy should be taught, to fix a certain standard of excellence for the American people, and to hold up this standard before those who seek preferment in public life, to show the nature and extent of the qualifications which they should try to acquire. It is not that none but those who graduate in the military or naval academies succeed in obtaining honor in those professions; nor would it be so in civil life, in case the school which I advocate should be established, but the influence of such an example could not, in my judgment, be over-rated.

In conclusion, let me repeat that I think the time has come for our profession to raise its voice in favor of the great truth that in a free country, government must be the supreme business of the people. The hand of the government is over all, to protect or to restrain. It is amazing to see that in American public life the public service goes limping on a beggar's dole, while the great private institutions command the highest order of talent by paying what it is worth. The error of a false notion of public economy ought now to be rooted out of the public mind. When the governments of the United States and the several states of this Union shall begin to regard government as the

great business of a free people, and to consider how transcendently greater are the interests of even a small city—not to say a large city, or a state—than the largest and most gigantic of private enterprises can be, and to pay for the service which conducts and protects them, as, to her glory, the mother-country has always done, its honest equivalent, then, and not till then, we may expect that such reforms as were advocated in the able paper of Mr. Sterne will make speedy headway and advance to success.

I thank you, sir, and gentlemen of the Association, for the attention I have received, and regret that I have occupied so much of your time.

Benjamin A. Willis, of New York, said :

I have listened with attention and profit to the thoughtful paper presented by my friend from New York. It shows an extent of research creditable to him, and worthy of the subject he discussed. He has depicted accurately the evils attendant upon our legislative system, upon the organization of our legislative bodies, the formation of legislative committees, and the election of legislative officers. He has impressed us in a most thoughtful manner with an idea of that most loathsome of all evils, the institution known as the lobby. He has discussed these living practical questions in a frank and manly way. He has presented remedies for the cure of these abuses. Whether these remedies are effective, practicable, and such as the exigency requires, is the question to be determined by this Association. It is a question that comes within the purview of its purpose and object.

And herein, I wish to say, that I entertain with the gentleman a broad and essential difference of opinion. The proposition he presents is,—1st, That a division be had between private and public laws: 2d, That private laws be regarded as bills of a private nature: 3d, That a certain char-

acter of suit to be instituted by the party desiring that class of legislation; 4th, That in so far as public laws are concerned, a supervisory board be created, to the end that private interests be in no wise effected by what is seemingly general legislation; 5th, That in public acts wherein property is to be taken for public purposes, or corporate franchises to be granted or withheld, public notice shall be filed in certain governmental offices; 6th, That public notice shall be printed, and in instances where property is to be taken either in fee or by way of easement—in such cases, notice shall be given to the party to be affected by the legislation.

To carry out these reforms he proposes that a new professional body be created known as parliamentary lawyers or agents; that incidental thereto there shall be established a body of parliamentary experts. I have never as yet encountered a public measure, or a proposed remedy more obnoxious to the spirit of this government and the character of our institutions than that which my learned friend, Mr. Sterne, has proposed. It is the essence of a republic that the boundaries between the judicial, the legislative, and the executive departments, should be distinctly defined. In this proposition he has suggested a merger of all these different functions. He proposes to make as an adjunct to the legislative function a judicial function, so that these men, so inefficient for the purpose of legislation, which is not questioned, are not only to be legislators but judges. Then, again, the system that he proposed is cumbersome. It is well known that in this country all appliances of government are expensive and ineffective. He proposes to make it more complex. The tendency should be the other way. We should make our legal system more cheap than it has been heretofore. I deplore this inclination on the part of my learned friend, and also the gentleman who preceded me, to ignore all the exigencies of our Repub-

lican system, while they are so completely absorbed with the virtue of the monarchical system. Then, again, if you will review the provisions of this plan, the establishment of a legislative system of fees, employment of experts, the deposit of a percentage where an improvement is to be instituted, this would absolutely preclude the poor man from availing himself of his rights under the law. It would enable only the corrupt and rich, who have in contemplation jobs which are sure to bring them a large revenue. They are the only men to-day who are able to employ lobby agents. Will parliamentary agents be any less expensive? will it be necessary for me to employ Mr. Sterne as a parliamentary agent? Would he serve me any more economically than the miserable lobbyist who now struts up and down the corridor, content to await the contingent division of the spoils? Mr. President, I do not wish to occupy the time of this body. There is a cure for all these evils. They proceed from a disregard of the only legitimate governmental function; that is, that the purpose of the government is to protect person and property, not to build up great enterprises, not to meddle with local affairs remote from the capitol, but to remand all matters to towns, to cities, and to counties, which belong to them, leaving the responsibility with the people, in those particular sections, so far as matters relating to those localities are concerned. Let us dispense altogether with private legislation in the halls of our capitol; let us establish a general law, providing for a court of claims, composed of men who are fitted, judicially, to determine all these questions involving special legislation, and where general laws will not avail, let the suitor go into that court of claims, and get that to which he is legitimately entitled. This is practicable, and is in accord with our institutions. Let us reduce the governmental function to the minimum. Let us have the least possible government. I have not that

veneration and respect for government expressed by my friend from Illinois, Mr. Bonney. I believe the government has no right to exercise any function, save that which the people have specially delegated to it. And I believe that the more civilization, the less government and the less restraint is needful. Let the national government confine itself to its own function; let us have a strict construction of the constitution: that no power should be exercised save those which are expressly delegated, all others being reserved to the people and the states respectively; not that elastic construction which enabled the Supreme Court of the United States to give sanction to that most infamous of all propositions, that a great nation can repudiate its debts; an infamy that would not be tolerated in Turkey, or in South America prevail. Now, gentlemen, herein consists the remedy: let us have the constitution amended, so that items of an appropriation bill can be vetoed; let the rules of your legislation be so revised that care and skill can be given to every public measure. Herein you have a remedy that is American, and not Anglican. Let us lean on the excellency and glory of the only government which is based upon the law of equal freedom.

The President:

I am reminded that the rule of this discussion is laid down in our By-Laws, and limits speakers to ten minutes each, unless by special consent. The discussion may now proceed.

Henry C. Semple, of Alabama:

I should feel great diffidence in discussing this question, except for the fact that Judge Poland, last night, desired me to relate an instance of this "slipshod" legislation in my own state. I shall take advantage of that invitation to address you, and will close what I have to say by relating that case.

I cannot agree entirely with my brother from Illinois, or my brother from New York. As to the former, one of his objections to the views presented by Mr. Sterne was that he did not go to the very foundation of our difficulties; and one of the chief troubles, in his opinion, was the constitution of two houses in our legislatures, when we have no such thing as a hereditary class. I believe that our forefathers builded wiser than they knew when they followed the precedent of two houses. They perhaps foresaw this immense mass of statute legislation, and they intended that system, not as a model after the British House of Lords, but as a means of obstruction to hasty legislation; and I insist that it would be better if there was no difference whatever between the Senate and the House of Representatives; that there should be two, even if we divided the House of Assembly into two branches; it would be far better that a bill would have to go through two mills before becoming a law.

C. C. Bonney, of Illinois:

I agree to that.

Henry C. Semple, of Alabama:

I differ somewhat from my friend from New York. I am not ashamed to adopt what is good in all foreign lands. We lawyers, above all others, know that those things which we inherit are most valuable. I think it was Paul who said that he was born a Roman citizen, and he valued that great inheritance more highly because it was an inheritance; others had acquired it at a great price, but he was *born* a Roman citizen. So we lawyers value those privileges and those liberties which we inherited from good old England; and when we come to count that which we value most, you will find that we have inherited most of it. Very little of our system of jurisprudence has been manufactured.

We inherited it, and we have simply improved upon it. So I say that in this invention—for it was a recent invention in England, that grew out of the extension of the popular system of a return to the manner of our old ancestors who lived in the forests of Germany—it is only since they became liberal, since the franchise has been extended, twenty times as far as it was in the day of Burke, that the system of watchfulness of experienced men over parliamentary legislation has been adopted in Great Britain. Our friend seems to think that these men are the advocates of those who introduce these measures for their own benefit. That is not so. The men who introduce the measures are required to pay a fee. The parliamentary agents are the counsel to parliament; they watch all these measures; they see that there is no slipshod legislation. The duties performed by these men have been found to be most excellent auxiliaries to good government. So far from being undemocratic, it has sprung up with the advance of democratic ideas, and has demonstrated its own usefulness. Now, in my state, the legislature is in session sixty days. During the last session, some six or seven hundred bills were passed, of which the most important was the Revenue bill, which was rendered necessary by the settlement of the state debt. They had required the creditors to take bonds, with interest payable at three to five per cent, increasing from year to year, and the necessity of providing an increased fund to pay the increased interest made it necessary to remodel the Revenue bill. Instead of devoting sufficient time to this important bill, it was put off until the very last day of the session, and was signed by the governor at twelve o'clock at night, after only a few hours' time in which he could look it over. When the bill was first introduced, the Senate and House differed. The bill was amended. The House refused to assent to the amendment. Conference

committees were appointed. They discussed it, and finally agreed upon it. In the final enrolment of the bill, the clerk left out the words "or solvent credits." The Senate had insisted upon those words, which the House did not want. The bill was approved by the governor without noticing the omission. I was applied to by a certain corporation to know whether they were obliged to pay the new tax, and discovered that, after the legislature had adjourned, and after the act had been printed, a sort of caucus had been held in the Supreme Court library by certain gentlemen—the chairman of the Committee on Ways and Means in the House, the same from the Senate; the chairman of the Finance Committee in the Senate, the same from the House; and the chairmen of the Senate and House Judiciary Committees had got together and decided that they would put those three words back in the bill. They actually took the bills from the archives of the state, and (I believe, with the consent of the governor, at least with his knowledge), erased three lines in the bill, and then rewrote them, together with the words "or solvent credits." This proceeding came to my knowledge. I knew, of course, that the bill was null and void, under those circumstances, and the Supreme Court so declared it to be. Here, you see, is a history of slipshod legislation occurring within the last eighteen months, which furnishes one of the strongest arguments for the application of the rules which our friend, Mr. Sterne, suggests.

John F. Dillon, of New York:

Did your Supreme Court look beyond the engrossed bill?

Henry C. Semple:

Yes, sir.

R. Wayne Parker, of New Jersey:

I wish to say how much I doubt the efficacy of constitu-

tions to control legislatures; how much I doubt also as to the reference of law-making to a committee, much as I sympathize with the wish of the gentleman to whom we listened with so much pleasure last night, that we should have some sort of a committee who should supervise legislation. We have now a mode of proceeding in every legislature under which any ten honest men can call before the legislature and public every defect in every bill. We have three readings that can be insisted upon. We have two houses, and a governor whose duty it is to look over the bills, and why in that court of parliament that we have, are not the bills considered? Simply because the legislature does not want to consider them, and because every member has a bill that he would like to shove through. We have in my own state, provisions that all private acts shall be advertised before the session. The constitutional provision exists, but the legislature changes the private act into a seemingly public law, and passes it as such. The only thing that can be relied upon to restrain any deliberative body is a few honest, upright, obstinate men, who are willing to stand up and say that a bill shall not be hurried through, men who are ready to be called "cranks" and obstructionists, and who are ready to do anything to secure deliberation. We are asked to go a step further, and take that deliberation from the legislature and put it in the hands of a commission. I believe in commissions for advice and for deliberation and determination, not for legislation. If legislators can shove the responsibility of general laws off their own shoulders, they do it. We all know that the more you put in the hands of a commission, the less debate you have, and the more power lobbyists have in framing and passing what laws they please. Permanent commissions, which are continued through the sessions of several legislatures, as a rule, become the worst

of political bodies, and in New York, in the past, they have been infested with all sorts of corruption. What then? Shall we give up the effort for reform? No; but the first step in the reform is one that the lawyers in this body can probably effect, for if there be any legislator now in this Association, thank Heaven and our republican institutions and the rules of legislative assemblies,—that one man can force deliberation, even if he loses his chance of re-election; while if he has the power of leadership, he can make himself popular before he is through. I believe in the power of a man, not in a system of law-making by committees. Why does that system work in England? Because it is a natural growth within their own legislature. The King and Lords, for a hundred years, have given up the government, and the Queen does what she is told to do by the leader of the House of Commons. And when you go into that place to-day you cannot help being astonished at the difference between the present parliament and that after which our own constitutions were framed. The Premier of England wields more power than any other single individual in the world. He appoints one-third of all the clergymen and all the bishops of the United Kingdom. He appoints the judges of England, of India, and of Canada, and of all the isles that Britain owns. He appoints all governors. He frames and leads all public measures. He is responsible for all. He is subject at the opening of every day's session of parliament to answer some thirty or more questions, relating to every detail of government. He dare not add to his great public duties the responsibility of favoring or opposing private legislation, and hence he, the leader of the majority, must, for his own protection appoint a committee, which is a real committee, who shall take that burden off his shoulders; for, remember, a single vote of the house cast adversely to him turns him from his place

and puts another man there. Hence, the committee system for private bills is the direct outcome of party government in England by which public bills are never introduced by any one except the leader of Her Majesty's government.

I do not believe that the English system of ministerial leadership ought to be introduced in America. The executive, in attempting to lead the lower House, becomes the servant of its majority, and must for peace sake give up the veto power that we have wisely retained; while the upper House dare not stand alone against the other two branches, and becomes a practical nullity. We do not want the President to be a dignified cipher, nor to be governed, as in England, by the votes of a single chamber, led by a single man. We intend to preserve the wise balance of our Constitution, under which legislative purity will yet be worked out—not by imitation of the English, but by growth from within, under the firm control that the American people have always exercised in public affairs.

W. H. H. Russell, of New York, said:

In view of the fact that Mr. Field desires to present an important matter, and that the excellent paper deserves a careful consideration, I call for the question.

The President then put the question to vote, and it was adopted.

L. P. Poland, of Vermont:

The Executive Committee have to submit the following. The first is intended as an additional By-Law, to be numbered 14: "All committees may have their reports printed by the Secretary before the Annual Meeting of the Association."

And another, which is an amendment to the By-Laws:

"The travelling and other necessary expenses incurred by any committee, standing or special, for meetings of such

committee during the interval between the Annual Meetings of the Association, shall be paid by the Treasurer, on the approval and by the order of the Executive Committee."

Both of these By-Laws were adopted.

Rufus King, of Ohio, said:

I beg to submit a report from the Committee on Judicial Administration and Remedial Procedure. There were two subjects referred to this committee last year, one being a resolution offered by Mr. Thomas, of Missouri; the other being a proposition made by the Bar Association of Philadelphia. I offer, first, a brief report upon the first subject, and Mr. Merrick will then offer the report of the committee upon the other subject.

The report on the first subject is as follows:

The Committee on Judicial Administration and Procedure respectfully report that the Vice-Presidents have failed, with but one exception, to comply with the resolution adopted at the last meeting of the Association, requesting them to "prepare and forward to this committee summaries of the judicial systems of their respective states."

The committee are, therefore, unable to comply with the further duty imposed upon them by the resolution; but as the information thus sought is deemed to be important, they recommend that a circular be sent by the Secretary to each of the Vice-Presidents, requesting their attention to the resolution, and if it shall be inconvenient to either of them to comply, that he will delegate some other member of the Association from his state to discharge the duty.

For the purpose of ready reference and comparison, it is recommended also that the reports be briefly made under the following heads:

1. The entire system of courts of the state in their order superior and inferior.

or otherwise, that had been submitted in the legislative body, with the criticisms upon each, in a pamphlet which is now on the table, open for inspection, and copies will be sent to all who desire it. This committee, to which the resolution was referred, has now made its report. It asks two things: 1st, That they may have further time to consider the question, or report to this body next year; and, 2d, In the meantime that the subject be laid on the table. I have some interest in this matter. I think I am familiar with the history of this effort to relieve the Supreme Court. Four hours a day for four days in the week is too much, and unless something is done, no one can be found who will accept an appointment on that bench. Having some interest in this question, I rise to second the motion and ask for its adoption as submitted by the committee.

W. P. Wells, of Michigan:

The non-attendance of the Committee on Judicial Administration, which appears by the report of my friend from the District of Columbia to be the reason why we have no report on this occasion, will not occur again. In 1882 this subject was fully discussed upon majority and minority reports of a committee composed of the most distinguished members of this body. A conclusion was reached by a majority vote. It is true there was not unanimity; but, sir, if the influence of this Association is ever to be exerted, it is necessary that a conclusion should at some time be reached; and I suppose that the reason that it is discussed at all here, is to the end that some time or another we may exert an influence in accomplishing this most needed relief. Since I came here, a distinguished member from the District of Columbia told me of an instance which is heart-rending. In the state courts of Pennsylvania, a controversy arose upon a contract arising out of a patent cause. Judgment

went in favor of the inventor. His adversaries took the case to the Supreme Court of the United States, and a motion was made on his behalf to dismiss the case on the ground that there was no federal question involved. His counsel said to me: "There is no pretense for argument that there is any federal question in the cause." When the motion was called up the Supreme Court, looking at the bulky record, said: "We will defer the decision of this question, whether or not we have jurisdiction, until the merits are argued." And, therefore, the decision of that question was deferred for three years. The poor inventor, with ruin and starvation staring him in the face, went into the lobby and burst into tears. Now, Mr. President, when such a thing as that can happen, the delay in the business of the United States Supreme Court is a shame to our jurisprudence. Let us, as soon as possible, have a determination by this Association which shall be unanimous. For myself, although I had decided views in favor of one scheme, opposed by the majority of the committee, I am willing to yield any personal opposition to any scheme which shall accomplish the relief, and I hope that at the next meeting of this Association we shall have a report upon which we can all agree.

Simon Sterne, of New York, said :

I desire to draw attention to the fact that there is now pending a bill in Congress which proposes to add to the labors of the Supreme Court the duties of a trial-court in a thousand or more causes, and that, therefore, any plan that we may devise for the purpose of relieving that court, so far as its docket is concerned, will probably be made nugatory and valueless, if that bill becomes a law. That bill has already passed the Senate, and been favorably reported by a committee of the House, and its passage is threatened as

soon as Congress meets. I believe it is Senate bill No. 19.

The report of the committee was then received, and its recommendations adopted.

The report of the Treasurer was then read.

On motion of Benjamin A. Willis, of New York, it was accepted and placed on file.

(See the report at the end of the minutes.)

Simeon E. Baldwin, of Connecticut:

I call for action upon the resolution which I offered yesterday, and which was deferred until to-day. I move the adoption of that resolution.

Skipwith Wilmer, of Maryland, seconded the motion, and it was adopted.

H. L. Lazarus, of Louisiana:

I have been requested to present to the Association, for its consideration, and for reference to the Committee on Commercial Law, the following resolution:

Resolved, That the Committee on Commercial Law be requested to report to the next meeting as to the expediency of endeavoring to secure from the several states, as regards domestic transactions, and from Congress, as regards transactions between citizens of different states, such legislation as may secure uniformity in the obligations arising from indorsements in blank, by third parties, of commercial paper.

Alexander R. Lawton, of Georgia, seconded the motion, and it was adopted.

David Dudley Field, of New York, said:

The resolution which I propose is one that calls for the expression of no opinion whatever, but simply for a refer-

ence and an inquiry upon the subject, which we have had in our minds all the while, and which has been alluded to in almost every speech—namely, the delay and uncertainty in the administration of justice. The resolution is as follows:

Resolved, That a select committee of five be appointed by the President, to consider and report, at the next annual meeting, whether the present delay and uncertainty in judicial administration can be lessened, and, if so, by what means.

When I heard the remarks of the last speaker upon the inquiry in respect to the Supreme Court, I was struck with this thought: that the same complaint exists in regard to all our courts, and to the administration of justice throughout the country. In New York, if I have a promissory note upon which I sue my neighbor, and there be a defence offered, that case cannot be decided within six or seven years. I asked an eminent gentleman from Baltimore, the other day, how long it took to try a case in Maryland. "Begin now, at the court of first instance," he said, "and go to the highest court; when you have got a definitive solution, it will take from a year and a half to two and a half years." I suppose, Maryland is one of the quickest of our states. In New Jersey, I do not know how it is, though I have heard that the delays are very considerable. But this I say: that the delays in the administration of justice in this country are monstrous; that they are under our especial cognizance, and that we are bound to find a remedy, if remedy there be. That is all I affirm. Now, it may be said that this Association is a young one. Very well; it will be older bye-and-bye. As Napoleon said, when he was asked if he was not too young a man to command an army: "I shall be older when I come back."

This is a government of opinion. In fact, all over the

world it is opinion which rules, and it is the opinion of a few men. My own experience and observation is that a very few men make all the revolutions that there are on this globe. Now, the American Bar Association has great duties, great responsibilities and a great future. Only three days before I came here I read a book written by an American resident in Japan, in which he proposes that the American Bar Association shall be appealed to, to prepare a civil code for all the States of America. I mention this as an instance merely—as a proof—of what the outside public think of our duties. Our duty is to do what we can to shorten, to facilitate, and to make certain, the administration of the law whose ministers we are. I therefore propose that we should appoint a committee. I would not have it a one-sided committee. If there is anybody who supposes I have a special reference to a civil code, let it be divided between those who oppose codes. Let us know all we can about the subject of the administration of justice, for that is the end of all our laws and all our efforts.

I have been struck, in listening to the discussion here, with this fact. You propose to relieve the Supreme Court of the United States. You have many plans. But have you mentioned the essential condition? That is a court created by the constitution. You cannot create another. That court can decide in a year only four hundred cases. Well, what is the problem, then? The problem, then, is to sift out of all the litigation of the country those four hundred cases which policy and necessity and the equalization of our laws require. You cannot send there all the cases that arise. You must take the few cases which are necessary to make the administration of the constitution and of the laws uniform throughout this land. We have the same problem in New York. Our Court of Appeals is crowded in the same way. You can get a case on in perhaps two

years after it has got there. A little while ago the calendar was cleared, and we all thought that we had reached the judicial millenium in New York. But it is crowded again. You never can, I say once for all, load that court with more than it has now to bear, and you must lessen the burden now resting upon it. That is the problem you have got to solve. Now, Mr. President, my resolution is simply a resolution of inquiry in the exercise of our judgment, to consider and report to the Association whether the present delay and uncertainty in the administration of justice can be lessened; and, if so, by what means.

Charles A. Peabody, of New York, seconded the motion.

James O. Broadhead, of Missouri:

The resolution speaks its own importance, and therefore I do not see any necessity of argument upon the proposition. I think it meets with the universal approbation of this Association. I move its adoption.

The resolution was then adopted.

A. J. Todd, of New York:

I offer the following resolution:

Whereas, A bill is pending before Congress relative to the appointment of a commission, whose duty it shall be to examine into the patent, trade-mark, and copyright laws, and to report to Congress, at its session next after the appointment of such commission, as to what, if any, changes should be made in such laws. Therefore be it

Resolved, That it be referred to the Committee on Commercial Law what, if any, action should be taken respecting any legislation that may be proposed in the matter of changes in the patent, trade-mark, and copyright laws.

The resolution was adopted, and referred to the Committee on Commercial Law.

W. H. H. Russell, of New York, offered the following:

Resolved, That the Committee on International Law report at the next session some measure or suggestions, by which a uniform system of the registration of births, marriages and deaths may be secured in each state and section, looking to the establishment of a bureau or department at Washington, where the registration of all births, marriages and deaths in the United States may be established; and further, that Congress should be urged to pass a law requiring all steamships or vessels entering the ports of the United States to furnish lists of emigrants to the custom house officers of the respective ports, which said lists shall be copied and forwarded to the proper department in Washington.

The object of the resolution is this: Since 1856, if any person dies within any province of Great Britain, you can find the name on record in the Somerset House, in London. By the payment of a shilling you can get the full record of the decease of any person. Now, if such a system could be inaugurated here, it would be a great advantage. I ask that this resolution be referred to the Committee on International Law for investigation, and for report at the next annual meeting, if of sufficient importance.

Skipwith Wilmer, of Maryland, seconded the resolution, and it was adopted.

E. F. Bullard, of New York:

I offer the following resolution:

Resolved, That the Committee on Judicial Administration and Remedial Procedure be instructed to examine the bill which passed the last session of the United States Senate, and is now pending before the lower House of Congress, in regard to imposing further duties upon the Supreme Court of the United States, known as "Senate Bill, No. 19," and

furnish to the Committee of the House such suggestions as they deem proper.

It occurs to me, when we are providing additional judicial force to relieve the Supreme Court, it is the duty of this Association, at the same time, to have an oversight over pending bills, and thus prevent that court being unnecessarily loaded down.

A. J. Todd, of New York, seconded the resolution.

R. T. Merrick, of Washington, D. C., said:

Is it not a resolution of instruction to the committee to act according to their very best knowledge?

E. F. Bullard, of New York, said:

I adopt the suggestion that this committee be authorized to take such action as they may deem proper.

John F. Dillon, of New York, said:

I have not seen the bill referred to, and I would not consent to refer to a committee any resolution without knowing the character of the bill in question. Therefore, for one, I object to committing this Association to any recommendations which shall carry with them the moral force of a recommendation from this Association, with respect to any bill, or the policy of any bill, when we are unacquainted with it. The circumstances may be such as to justify the passage of the bill. Mr. Sterne tells us that a thousand or more cases are involved in this proposed measure. They may all be dependent upon one fundamental question, and it may be of such importance as will justify the providing of machinery whereby that may be determined by the Supreme Court of the United States. In fact, we have here to deal with a great problem. Until you have determined the measure of jurisdiction of the inferior courts, you cannot, philosophically, deal with the problem of the jurisdiction of the Supreme Court. Certain it is, that such is the deserved

and just confidence of the people of these United States, and of the bar of this country, in the Supreme Court, that it is a constantly felt want to get an important case within the jurisdiction of that court. I therefore move, Mr. President, that the resolution be so amended as to refer this matter to the committee named in it, to report at this time to this session, if need be.

James O. Broadhead, of Missouri :

I think I know all about that bill. Its jurisdiction sought to be conferred on the Supreme Court is the very same jurisdiction as was given to the same court under the act of 1851, which provided for the adjudication of land titles in California. It is the same as was given under the previous act of 1853, providing for the adjudication of claims in Louisiana, Arkansas, and Missouri. I suppose this bill would not have jurisdiction over about three hundred cases. The decisions are now made by the Land Office Commissioner. The better plan, I think, would be to appoint a commission. When we acquired Louisiana, a commission was appointed. Their report was submitted to Congress and Congress approved of it. Subsequent legislation provided for an appeal to the Supreme Court from the Circuit Court. The great objection to this bill—and I have objection to it—is, that it does, in my opinion, violate the provisions of the treaty with Mexico. It undertakes to limit the amount of the claims and other things which are in violation of that treaty. I agree with Judge Dillon, that in reference to these matters we ought not to invest any one committee with the absolute power of speaking for this Association until this Association has acted with a full understanding of the question before them.

Richard T. Merriek, of Washington :

As a member of that committee, I wish to say that I

would rather shun than accept the responsibility that this resolution suggests imposing. The judgment of the committee would doubtless be subjected to serious and embarrassing criticism after the result has been accomplished. It is putting the committee in a delicate attitude to impose upon them what in their judgment ought to be done. I therefore hope that the committee will not be obliged to take charge of the matter. At the same time, I would call Mr. Broadhead's attention to the suggestion that in all probability any difficulty in reference to the organization of a federal tribunal, in the shape of a commission to hear these cases on error, can be avoided by substituting in that bill the Court of Claims for the Supreme Court, as a final appellate tribunal, especially in view of the fact that in all this class of cases to which reference is made in the bill, the United States is itself a party, and the Court of Claims is specially organized for the consideration of cases in which the United States is a party.

James O. Broadhead, of Missouri:

I think your suggestion is a good one.

A. J. Todd, of New York:

There is a decided expression of opinion against that kind of legislation, and the probability is that all useful ends will be served by the committee from this Association meeting the committee of Congress, and then reporting to us next year.

The President:

I will read a resolution which, it has occurred to me, will embrace all that has been offered:

Resolved, That, in the judgment of this Association, only a very extreme case will justify any addition to the present duties of the United States Supreme Court, and that the Committee on Judicial Administration and Remedial Pro-

cedure be instructed to examine the bill which passed the last session of the United States Senate, and is now pending before the lower House of Congress, in regard to imposing further duties upon the Supreme Court, known as Senate bill No. 19, and to furnish to the committee of the House such suggestions as they may deem proper."

Henry Budd, of Pennsylvania :

It strikes me that if this Association is to take up everything that transpires in Congress, that may in some way oppose the views of any of our members, that we shall lose force and influence, especially if we allow any committee of the body to speak for us. Inasmuch as we do not exactly understand the nature of this senate bill Number 19, I move to lay the whole matter on the table.

Charles A. Peabody, of New York, seconded this motion, and it was adopted.

L. P. Poland, of Vermont, presented the recommendation of the General Council, that Egbert Whittaker, of New York, be made a member of this Association.

The President:

No objection being offered, the gentleman is a member.

On motion, the Association then adjourned *sine die*.

EDWARD OTIS HINKLEY,

Secretary.

REPORT OF THE TREASURER.

SARATOGA SPRINGS, *August 21, 1884.*

Your Treasurer submits the following Report for the year ending August 19, 1884:

Dr.

To balance from last report,	\$1,484 65
To cash received—dues of members,	2,725 00
	\$4,209 65

Cr.

1883.		
Aug. 21.	By cash paid Stationery for sixth meeting,	2 10
Aug. 22.	Telegram to Lord Coleridge,	4 66
Aug. 22.	Expressage,	5 70
Aug. 24.	Printing for sixth meeting, .	9 00
Aug. 27.	Expressage,	2 75
Aug. 30.	Grand Union Hotel for Sixth Annual Dinner,	518 00
Sept. 8.	E. O. Hinkley for Stenographers,	88 50
Sept. 8.	Expressage,	1 50
Sept. 10.	Expenses of clerk to Executive Committee,	27 10
Sept. 15.	Postage Stamps,	46 00
Oct. 3.	W. F. Murphy's Sons, Receipt Books,	6 00
Oct. 5.	A. Putnam, Jr., use of hall three days,	90 00
Oct. 5.	Postage stamps,	5 00
Oct. 5.	Circulars,	60
Oct. 5.	Expressage and Telegrams, .	2 17
	Amounts carried forward, .	\$809 08 \$4,209 65

1883.	Amounts brought forward,	\$809 08	\$4,209 65
Nov. 10.	By cash paid Janitor, Putnam Music Hall,	10 00	
Nov. 10.	Stamps,	6 00	
Nov. 17.	Geo. S. Harris & Sons, printing envelopes and circulars,	13 75	
1884.			
Jan. 30.	Geo. S. Harris & Sons, printing, etc., Sixth Annual Report,	1,016 00	
Jan. 30.	Printing wrappers, Sixth Annual Report,	15 10	
Feb. 1.	Letter file,	2 00	
Feb. 20.	Postage, expressage, etc., sending out Sixth Annual Report,	115 68	
Feb. 27.	Printing circulars and envelopes,	7 75	
Feb. 27.	Postage stamps,	12 00	
Mch. 5.	" "	5 00	
Mch. 5.	Telegrams to date,	9 39	
July 9.	Circulars,	60	
July 9.	Postage stamps,	25 00	
July 16.	Rubber stamp,	1 25	
July 19.	Postage stamps,	5 00	
July 19.	Expressage,	25	
July 31.	H. C. Esling, clerk to Treasurer, for year ending Aug. 19, 1884,	200 00	
Aug. 7.	Printing notices Seventh Meeting,	11 75	
Aug. 7.	Postal cards and envelopes,	13 50	
Aug. 16.	Expressage,	5 00	
	Balance,	1,925 55	
			4,209 65

Which consists of—

Balance to the credit of the Treasurer in the Commonwealth National Bank of Philadelphia,	\$1,907 00
Cash on hand,	18 55
	\$1,925 55

TREASURER'S REPORT.

85

Balance reported last year, . . .	\$1,484 65
Balance reported this year, . . .	1,925 55
Gain during the year, . . .	\$440 90

FRANCIS RAWLE

Treasurer.

Vouched and found correct,

JOSEPH A. WING

A. LEO KNOTT

Committee to Audit Accounts of Treasurer.

SARATOGA, *August* 21, 1884.

LIST OF MEMBERS ELECTED.

1884.

ALABAMA.

SEMPLE, HENRY C., Montgomery.

DELAWARE.

BATES, GEORGE H., Wilmington.

GRAY, GEORGE, Wilmington.

DISTRICT OF COLUMBIA.

BROWNING, FRANK T., Washington.

CUPPY, F. P., Washington.

ELLDOT, CHARLES A., Washington.

PAYNE, JAMES G., Washington.

REEVE, FELIX A., Washington.

TOTTEN, ENOCH, Washington.

WEBB, WILLIAM B., Washington.

KENTUCKY.

EVANS, WALTER, Louisville.

MACKEY, WILLIAM H., Covington.

MARYLAND.

GREEN, CHARLES J. M., Baltimore.

MCATEE, JOHN L., Hagerstown.

MASSACHUSETTS.

ABBOTT, J. C., Lowell.

DAVIS, JOHN, Lowell.

PIERCE, GEORGE W., Boston.

POWERS, CHARLES EDWARD, Boston.

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MICHIGAN.

BAKER, HERBERT L.,	.	.	.	.	Detroit.
CONELY, JOHN D.,	.	.	.	.	Detroit.
HOSMER, GEORGE S.,	.	.	.	.	Detroit.
ROGERS, HENRY WADE,	.	.	.	.	Ann Arbor.
THURBER, HENRY T.,	.	.	.	.	Detroit.

MISSOURI.

DORSON, CHARLES L.,	.	.	.	.	Kansas City.
DONALDSON, WILLIAM R.,	.	.	.	.	St. Louis.
PRATT, WALLACE,	.	.	.	.	Kansas City.
TAUSSIG, JAMES,	.	.	.	.	St. Louis.
TURNER, EDWARD W.,	.	.	.	.	Plattsburgh.

NEW HAMPSHIRE.

CROSS, DAVID,	.	.	.	.	Manchester.
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NEW JERSEY.

BERGEN, FRANK,	.	.	.	.	Elizabeth.
BUCHANAN, JAMES,	.	.	.	.	Trenton.
WILSON, WM. R.,	.	.	.	.	Elizabeth.

NEW YORK.

BAKER, FISHER AMES,	.	.	.	.	New York.
BELLINGER, LEWIS H.,	.	.	.	.	New York.
BRUNO, RICHARD M.,	.	.	.	.	New York.
CHAMBERLAIN, D. H.,	.	.	.	.	New York.
DICKSON, HERBERT E.,	.	.	.	.	New York.
FIELD, DAVID DUDLEY,	.	.	.	.	New York.
GLOVER, JOHN H.,	.	.	.	.	New York.
HERMAN, HENRY M.,	.	.	.	.	New York.
HULL, AMOS G.,	.	.	.	.	New York.
MYERS, NATHANIEL,	.	.	.	.	New York.
PARKER, JAMES,	.	.	.	.	New York.
PATTERSON, T. ELLIOTT,	.	.	.	.	Ilion.
SWAYNE, WAGER,	.	.	.	.	New York.
WHITEHOUSE, FREDERICK C.,	.	.	.	.	New York.
WHITTAKER, EGBERT,	.	.	.	.	Saugerties.
WILMER, WILLIAM N.,	.	.	.	.	New York.

OHIO.

HUNT, SAMUEL F.,	.	.	.	.	Cincinnati.
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PENNSYLVANIA.

BIDD, HENRY,	Philadelphia.
KATFFMAN, A. J.,	Columbia.
KAECHER, GEORGE R.,	Philadelphia.
ZIGLER, CHARLES F.,	Philadelphia.

RHODE ISLAND.

BAKER, DARIUS,	Newport.
BLODGETT, WILLIAM W.,	Pawtucket.
BRADLEY, CHARLES,	Providence.
COLT, SAMUEL P.,	Bristol.
COLWELL, FRANCIS,	Providence.
DIXON, NATHAN F.,	Westerly.
GREENE, ARNOLD,	Providence.
GREGORY, JOHN P.,	Woonsocket.
HART, CHARLES,	Providence.
HONEY, SAMUEL R.,	Newport.
LAPHAM, BENJ. N.,	Providence.
RIPLEY, JAMES M.,	Providence.
ROELKER, WILLIAM G.,	Providence.
THURSTON, JOHN D.,	Providence.
TILLINGHART, JAMES,	Providence.
VANSLYKE, NICHOLAS,	Providence.

TENNESSEE.

DUCKINSON, J. M.,	Nashville.
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TEXAS.

MC LEARY, J. H.,	San Antonio.
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VERMONT.

DAVIS, BLISS N.,	Danville.
PORTER, CHARLES W.,	Montpelier.
WING, JOSEPH A.,	Montpelier.

VIRGINIA.

GARNETT, THEODORE S.,	Norfolk.
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WISCONSIN.

SIBLEY, BRADLEY G.,	Milwaukee.
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RECAPITULATION.

States.	No. of Members.	States.	No. of Members.
ALABAMA,	1	OHIO,	1
DELAWARE,	2	PENNSYLVANIA,	4
DISTRICT OF COLUMBIA,	7	RHODE ISLAND,	16
KENTUCKY,	2	TENNESSEE,	1
MARYLAND,	2	TEXAS,	1
MASSACHUSETTS,	4	VERMONT,	3
MICHIGAN,	5	VIRGINIA,	1
MISSOURI,	5	WISCONSIN,	1
NEW HAMPSHIRE,	1		—
NEW JERSEY,	3	TOTAL,	76
NEW YORK,	16		

LIST OF DELEGATES.

DISTRICT OF COLUMBIA.

HENRY WISE GARNETT, ALEX. PORTER MORSE,
F. P. CUPPY.

GEORGIA.

HENRY JACKSON, THOMAS J. SIMMONS,
R. F. LYON.

MISSOURI.

HENRY HITCHCOCK, CHARLES L. DOBSON,
EDWARD W. TURNER.

TENNESSEE.

J. M. DICKINSON, J. C. BRADFORD,
M. M. NEIL.

TEXAS.

RICHARD S. WALKER.

MEMORANDUM.

The Annual Dinner was given on Friday evening, August 22d, at the Grand Union Hotel. Skipwith Wilmer, of Maryland, presided. Eighty members were present.

CONSTITUTION.

NAME AND OBJECT.

ARTICLE I.—This Association shall be known as “THE AMERICAN BAR ASSOCIATION.” Its object shall be to advance the science of jurisprudence, promote the administration of justice and uniformity of legislation throughout the Union, uphold the honor of the profession of the law, and encourage cordial intercourse among the members of the American Bar.

QUALIFICATIONS FOR MEMBERSHIP.

ARTICLE II.—Any person shall be eligible to membership of this Association who shall be, and shall, for five years next preceding, have been, a member in good standing of the Bar of any state, and who shall also be nominated as hereinafter provided.

OFFICERS AND COMMITTEES.

ARTICLE III.—The following officers shall be elected at each Annual Meeting for the year ensuing: A President (the same person shall not be elected President two years in succession); one Vice-President from each state; a Secretary; a Treasurer; a Council, consisting of one member from each state (the Council shall be a standing committee on nominations for office); an Executive Committee, to be composed of the Secretary and Treasurer, together with three members to be chosen by the Association, one of whom shall be Chairman of the committee.

The following committees shall be annually appointed by the President, for the year ensuing, and shall consist of five members each :

- On Jurisprudence and Law Reform;
- On Judicial Administration and Remedial Procedure;
- On Legal Education and Admissions to the Bar;
- On Commercial Law;
- On International Law;
- On Publications;
- On Grievances.

A majority of those members of any committee, including the Council, who may be present at any meeting of the Association, shall constitute a quorum of such committee for the purposes of such meeting.

The Vice-President for each state, and not less than two other members from such state, to be annually elected, shall constitute a Local Council for such state, to which shall be referred all applications for membership from such state. The Vice-President shall be, *ex officio*, Chairman of such Council.

A committee of three, of whom the Secretary shall always be one, shall be appointed by the President at each Annual Meeting of the Association, whose duty it shall be to report to the next meeting the names of all members who shall, in the interval, have died, with such notices of them as shall, in the discretion of the committee, be proper.

It shall be the duty of the Vice-President from each state and territory to report the deaths of members within the same to the said committee.

ELECTION OF MEMBERS.

ARTICLE IV.—All nominations for membership shall be made by the Local Council of the state to the Bar of which the persons nominated belong. Such nominations

must be transmitted in writing to the Chairman of the General Council, and approved by the Council, on vote by ballot.

The General Council may also nominate members from states having no Local Council, and at the Annual Meeting of the Association, in the absence of all members of the Local Council of any state; *Provided*, That no nomination shall be considered by the General Council, unless accompanied by a statement in writing by at least three members of the Association from the same state with the person nominated, or, in their absence, by members from a neighboring state or states, to the effect that the person nominated has the qualifications required by the Constitution, and desires to become a member of the Association, and recommending his admission as a member.

All nominations thus made or approved shall be reported by the Council to the Association, and all whose names are reported shall thereupon become members of the Association; *Provided*, That if any member demand a vote upon any name thus reported, the Association shall thereupon vote thereon by ballot.

Several nominees, if from the same state, may be voted for upon the same ballot; and in such case placing the word "No" against any name or names upon the ticket shall be deemed a negative vote against such name or names, and against those only. Five negative votes shall suffice to defeat an election.

ARTICLE V.—All members of the Conference adopting the Constitution, and all persons elected by them upon the recommendation of the Committee of five appointed by such Conference, shall become members of the Association upon payment of the annual dues for the current year herein provided for.

BY-LAWS.

ARTICLE VI.—By-laws may be adopted at any Annual Meeting of the Association by a majority of the members present. It shall be the duty of the Executive Committee, without delay, to adopt suitable by-laws, which shall be in force until rescinded by the Association.

DUES.

ARTICLE VII.—Each member shall pay five dollars to the Treasurer as annual dues, and no person shall be qualified to exercise any privilege of membership who is in default. Such dues shall be payable, and the payment thereof enforced, as may be provided by the By-Laws. Members shall be entitled to receive all publications of the Association free of charge.

ANNUAL ADDRESS.

ARTICLE VIII.—The President shall open each Annual Meeting of the Association with an address, in which he shall communicate the most noteworthy changes in statute law on points of general interest made in the several states and by Congress during the preceding year. It shall be the duty of the member of the General Council from each state to report to the President, on or before the first day of May, annually, any such legislation in his state.

ANNUAL MEETINGS.

ARTICLE IX.—This Association shall meet annually in the month of July or August, at such time and place as the Executive Committee may select, and those present at such meeting shall constitute a quorum.

AMENDMENTS.

ARTICLE X.—This Constitution may be altered or amended by a vote of three-fourths of the members present at any Annual Meeting, but no such change shall be made at any meeting at which less than thirty members are present.

CONSTRUCTION.

ARTICLE XI.—The word “*state*,” wherever used in this Constitution, shall be deemed to be equivalent to *state*, *territory*, and the *District of Columbia*.

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BY-LAWS.

MEETINGS OF THE ASSOCIATION.

I.—The Executive Committee, at its first meeting after each Annual Meeting, shall select some person to make an address at the next Annual Meeting, and not exceeding six members of the Association to read papers.

II.—The order of exercises at the Annual Meeting shall be as follows:

- (a) Opening Address of the President.
- (b) Nominations and Election of Members.
- (c) Election of the General Council.
- (d) Reports of Secretary and Treasurer.
- (e) Report of Executive Committee.
- (f) Reports of Standing Committees:
 - On Jurisprudence and Law Reform;
 - On Judicial Administration and Remedial Procedure;
 - On Legal Education and Admissions to the Bar;
 - On Commercial Law;
 - On International Law;
 - On Publications;
 - On Grievances.
- (g) Reports of Special Committees.
- (h) The Nomination of Officers.
- (i) Miscellaneous Business.
- (j) The Election of Officers.

The address, to be delivered by a person invited by the Executive Committee, shall be made at the morning session of the second day of the Annual Meeting.

The reading and delivering of essays and papers shall be on the same day, or at such other time as the Executive Committee may determine.

III.—No person shall speak more than ten minutes at a time, or more than twice on one subject.

A stenographer shall be employed at each Annual Meeting.

IV.—Each state Bar Association may annually appoint delegates, not exceeding three in number, to the next meeting of the Association. In states where no state Bar Association exists, any city or county Bar Association may appoint such delegates, not exceeding two in number. Such delegates shall be entitled to all the privileges of membership at and during the said meeting.

V.—At any of the meetings of the Association, members of the Bar of any foreign country, or of any state, who are not members of the Association, may be admitted to the privileges of the floor during such meeting.

VI.—All papers read before the Association shall be lodged with the Secretary. The Annual Address of the President, the reports of committees, and all proceedings at the Annual Meeting shall be printed; but no other address made or paper read or presented shall be printed, except by order of the Committee on Publications.

Extra copies of reports, addresses, and papers read before the Association, may be printed by the Committee on Publications for the use of their authors, not exceeding two hundred copies to each of such authors.

The Secretary and Chairman of the Executive Committee shall endeavor to arrange with the Smithsonian Institution, or otherwise, a system of exchanges, by which our *Transactions* can be annually exchanged with those of other Associations in foreign countries interested in jurisprudence or governmental affairs; and also that the Secretary exchange our *Transactions* with those of the state and local bar associations; and that all books thus acquired be bound and deposited in the charge of the New York City Bar Association, subject to the call of this Association, if it ever desires to withdraw or consult them, if the latter association agrees to such deposit.

No resolution complimentary to an officer or member for any service performed, paper read, or address delivered shall be considered by the Association.

OFFICERS AND COMMITTEES.

VII.—The terms of office of all officers elected at any Annual Meeting shall commence at the adjournment of such meeting, except the Council, whose term of office shall commence immediately upon their election.

VIII.—The President shall appoint all committees, except the Committee on Publications, within thirty days after the Annual Meeting, and shall announce them to the Secretary, and the Secretary shall promptly give notice to the persons appointed. The Committee on Publications shall be appointed on the first day of each meeting.

IX.—The Treasurer's Report shall be examined and audited annually, before its presentation to the Association, by two members to be appointed by the Chairman of the Executive Committee.

X.—The Council and all standing committees shall meet on the day preceding each Annual Meeting, at the place where the same is to be held, at such hour as their respective chairmen shall appoint. If at any Annual Meeting of the Association any member of any committee shall be absent, the vacancy may be filled by the members of the committee present.

The Secretary of the Association shall be the Secretary of the Council.

XI.—The Committee on Publications shall also meet within one month after each Annual Meeting, at such time and place as the Chairman shall appoint.

XII.—Special meetings of any committee shall be held at such times and places as the Chairman thereof may appoint. Reasonable notice shall be given by him to each member by mail.

The traveling and other necessary expenses incurred by any committee, standing or special, for meetings of such committee, during the interval between the Annual Meetings of the Association, shall be paid by the Treasurer, on the approval and by the order of the Executive Committee.

All committees may have their reports printed by the Secretary before the Annual Meeting of the Association.

ANNUAL DUES.

XIII.—The Annual dues shall be payable at the Annual Meeting in advance. If any member neglect to pay them for any year at or before the next Annual Meeting, he shall cease to be a member. The Treasurer shall give notice of this by-law, within sixty days after each meeting, to all members in default.

PRESIDENT,
JOHN W. STEVENSON,
Covington, Kentucky.

SECRETARY,
EDWARD OTIS HINKLEY,
43, North Charles Street, Baltimore, Maryland.

TREASURER,
FRANCIS RAWLE,
402, Walnut Street, Philadelphia, Pennsylvania.

EXECUTIVE COMMITTEE,
LUKE P. POLAND, *St. Johnsbury, Vermont*, CHAIRMAN.
SIMEON E. BALDWIN, *New Haven, Connecticut*.
WILLIAM ALLEN BUTLER, *New York, New York*.

EX OFFICIO.
EDWARD OTIS HINKLEY, SECRETARY.
FRANCIS RAWLE, TREASURER.

COUNCIL.

<i>Alabama,</i>	.	.	.	.	HENRY C. SEMPLE.
<i>Arkansas,</i>	.	.	.	.	M. M. COHN.
<i>Connecticut,</i>	.	.	.	.	GEO. H. WATROUS.
<i>Delaware,</i>	.	.	.	.	IGNATIUS C. GRUBB.
<i>District of Columbia,</i>	.	.	.	.	J. HUBLEY ASHTON.
<i>Florida,</i>	.	.	.	.	CHARLES P. COOPER.
<i>Georgia,</i>	.	.	.	.	GEORGE A. MERCER.
<i>Illinois,</i>	.	.	.	.	JAMES K. EDSALL.
<i>Indiana,</i>	.	.	.	.	ROBERT S. TAYLOR.
<i>Iowa,</i>	.	.	.	.	GEORGE G. WRIGHT.
<i>Kentucky,</i>	.	.	.	.	J. W. STEVENSON.
<i>Louisiana,</i>	.	.	.	.	THOMAS J. SEMMES.
<i>Maryland,</i>	.	.	.	.	A. LEO KNOTT.
<i>Massachusetts,</i>	.	.	.	.	EDMUND H. BENNETT.
<i>Michigan,</i>	.	.	.	.	WILLIAM P. WELLS.
<i>Minnesota,</i>	.	.	.	.	HIRAM F. STEVENS.
<i>Missouri,</i>	.	.	.	.	JAMES O. BROADHEAD.
<i>Nebraska,</i>	.	.	.	.	CHARLES F. MANDERSON.
<i>New Hampshire,</i>	.	.	.	.	DAVID CROSS.
<i>New Jersey,</i>	.	.	.	.	CHARLES BORCHERLING.
<i>New York,</i>	.	.	.	.	CHARLES A. PEABODY.
<i>North Carolina,</i>	.	.	.	.	THOMAS B. KEOGH.
<i>Ohio,</i>	.	.	.	.	EDWIN P. GREEN.
<i>Pennsylvania,</i>	.	.	.	.	ANDREW T. MCCLINTOCK.
<i>Rhode Island,</i>	.	.	.	.	CHARLES S. BRADLEY.
<i>South Carolina,</i>	.	.	.	.	A. G. McGRATH.
<i>Tennessee,</i>	.	.	.	.	J. M. DICKINSON.
<i>Texas,</i>	.	.	.	.	JACOB WAELDER.
<i>Vermont,</i>	.	.	.	.	LUKE P. POLAND.
<i>Virginia,</i>	.	.	.	.	LEGH R. PAGE.
<i>West Virginia,</i>	.	.	.	.	CALEB BOGGESS.
<i>Wisconsin,</i>	.	.	.	.	JOHN W. CARY.

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AND
MEMBERS OF LOCAL COUNCILS.

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Local Council, WALTER L. BRAGG, LUTHER R.
SMITH, DAVID BUELL, GAYLORD B. CLARK.

ARKANSAS.—Vice-President, U. M. ROSE.

Local Council, JAMES C. TAPPAN, BENJAMIN T.
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CONNECTICUT.—Vice-President, ALVAN P. HYDE.

Local Council, LYMAN D. BREWSTER, WASHINGTON F. WILLCOX, LEWIS E. STANTON.

DELAWARE.—Vice-President, THOMAS F. BAYARD.

Local Council, GEORGE GRAY, ANTHONY HIGGINS,
GEORGE H. BATES.

DISTRICT OF COLUMBIA.—Vice-President, H. H. WELLS.

Local Council, RICHARD T. MERRICK, NATHANIEL
WILSON, HENRY WISE GARNETT.

FLORIDA.—Vice-President, EDWIN M. RANDALL.

Local Council, CHARLES W. JONES, JOHN C. COOPER.

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Local Council, JOHN W. STEVENSON, JOHN MASON
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LOUISIANA.—Vice-President, CARLETON HUNT.

Local Council, THOMAS L. BAYNE, JOHN H. KEN-
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MAINE.—Vice-President, NATHAN WEBB.

Local Council, F. A. WILSON, O. D. BAKER.

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J. BONAPARTE, DAVID G. MCINTOSH, JOHN T.
MASON, R.

MASSACHUSETTS.—Vice-President, GEORGE O. SHATTUCK.

Local Council, SYDNEY BARTLETT, CHARLES W.
CLIFFORD, NATHANIEL W. LADD, DANIEL S.
RICHARDSON.

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Local Council, THOMAS M. COOLEY, DON M. DICK-
INSON, O'BRIEN J. ATKINSON, HENRY M.
DUFFIELD.

MINNESOTA.—Vice-President, GORDON E. COLE.

Local Council, REUBEN C. BENTON, JOHN A.
LOVELY, HIRAM F. STEVENS.

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Local Council, R. O. REYNOLDS.

MISSOURI.—Vice President, SHEPARD BARCLAY.

Local Council, WARWICK HOUGH, WALLACE
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Local Council, CHARLES F. MANDERSON.

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Local Council, CLINTON W. STANLEY, JOHN M.
SHIRLEY, GILMAN MARSTON.

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Local Council, EVERETT P. WHEELER, BENJ. A.
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ALPHABETICAL

LIST OF MEMBERS—1884-1885.

ABDOTT, J. C.,	Lowell, Mass.
ACKLEN, JOSEPH H.,	Franklin, La.
ADAMS, SAMUEL B.,	Savannah, Ga.
ALBERT, TALBOT J.,	Baltimore, Md.
ALDRICH, CHARLES H.,	Fort Wayne, Ind.
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ALLEN, STILLMAN E.	Boston, Mass.
ALEXANDER, JULIAN J.,	Baltimore, Md.
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ANDERSON, CLIFFORD,	Macon, Ga.
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ATHERTON, THOMAS H.,	Wilkesbarre, Pa.
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BAER, GEORGE F.,	Reading, Pa.
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BAKER, ASHLEY D. L.,	Gloversville, N. Y.
BAKER, DAVID,	Newport, R. I.
BAKER, HERBERT L.,	Detroit, Mich.
BAKER, JOHN H.,	Goshen, Ind.
BAKER, ORVILLE D.,	Augusta, Me.
BAKER, WILLIAM,	Toledo, O.
BALL, DANIEL H.,	Marquette, Mich.
BALDWIN, CHARLES C.,	Cleveland, O.
BALDWIN, G. W.,	Boston, Mass.
BALDWIN, HENRY, JR.,	Philadelphia, Pa.
BALDWIN, SIMON E.,	New Haven, Conn.

BALLENGER, W. P.,	Galveston, Tex.
BARCLAY, SHEPARD,	St. Louis, Mo.
BARKER, THEODORE G.,	Charleston, S. C.
BARROW, POPE,	Athens, Ga.
BARTLETT, SIDNEY,	Boston, Mass.
BATE, H. R.,	Covington, Tenn.
BATES, GEORGE H.,	Wilmington, Del.
BAUSMAN, J. W. B.,	Lancaster, Pa.
BAYARD, THOMAS F.,	Wilmington, Del.
BAYNE, THOMAS L.,	New Orleans, La.
BEASTEN, CHARLES, JR.,	Baltimore, Md.
BELL, C. U.,	Lawrence, Mass.
BELLINGER, LEWIS H.,	New York, N. Y.
BENEDICT, ROBERT D.,	New York, N. Y.
BENEDICT, W. S.,	New Orleans, La.
BENET, WILLIAM C.,	Abbeville, S. C.
BENJAMIN, M. W.,	Little Rock, Ark.
BENNETT, EDMUND H.,	Taunton, Mass.
BENTON, REUBEN C.,	Minneapolis, Minn.
BERGEN, FRANK,	Elizabeth, N. J.
BIDDLE, GEORGE W.,	Philadelphia, Pa.
BINGHAM, HARRY,	Littleton, N. H.
BISPHAM, GEORGE TUCKER,	Philadelphia, Pa.
BLACK, J. C.,	Danville, Ill.
BLACK, J. C. C.,	Augusta, Ga.
BLANC, SAMUEL P.,	New Orleans, La.
BLODGETT, WILLIAM W.,	Pawtucket, R. I.
BOGGENS, CALEB,	Clarksburg, W. Va.
BONAPARTE, CHARLES J.,	Baltimore, Md.
BOND, S. R.,	Washington, D. C.
BONNEY, C. C.,	Chicago, Ill.
BORCHERLING, CHARLES,	Newark, N. J.
BOYD, JAMES E.,	Greensboro, N. C.
BOYD, ROBERT W.,	Darlington, S. C.
BRADLEY, CHARLES,	Providence, R. I.
BRADLEY, CHARLES S.,	Providence, R. I.
BRAGG, WALTER L.,	Montgomery, Ala.
BRALEY, HENRY K.,	Fall River, Mass.
BREAUX, G. A.,	New Orleans, La.
BRECK, CHARLES DU PONT,	Seranton, Pa.
BRECKENRIDGE, SAMUEL M.,	St. Louis, Mo.
BRECKINRIDGE, WM. C. P.,	Lexington, Ky.

BREDIN, JAMES,	Butler, Pa.
BREWSTER, LYMAN D.,	Danbury, Conn.
BRICE, A. G.,	New Orleans, La.
BRIDGERS, JOHN L., JR.,	Tarboro, N. C.
BRISTOW, BENJAMIN H.,	New York, N. Y.
BROADHEAD, JAMES O.,	St. Louis, Mo.
BROOKS, FRANCIS A.,	Boston, Mass.
BROWN, HENRY B.,	Detroit, Mich.
BROWN, JOHN C.,	Pulaski, Tenn.
BROWN, JOHN MASON,	Louisville, Ky.
BROWN, SEBASTIAN,	Baltimore, Md.
BROWNING, FRANK T.,	Washington, D. C.
BRUNDAGE, A. R.,	Wilkesbarre, Pa.
BRUNO, RICHARD M.,	New York, N. Y.
BRUSH, CHARLES H.,	New York, N. Y.
BRYAN, JAMES W.,	Covington, Ky.
BUCHANAN, JAMES,	Trenton, N. J.
BUCKNER, B. F.,	Lexington, Ky.
BUDD, HENRY,	Philadelphia, Pa.
BUELL, DAVID,	Greenville, Ala.
BULLARD, E. F.,	New York, N. Y.
BULLOCK, A. G.,	Worcester, Mass.
BURKE, STEVENSON,	Cleveland, O.
BURNETT, HENRY L.,	New York, N. Y.
BURNHAM, HENRY E.,	Manchester, N. H.
BUTLER, JOHN M.,	Indianapolis, Ind.
BUTLER, WM. ALLEN,	New York, N. Y.
BUTLER, WM. ALLEN, JR.,	New York, N. Y.
CARROLL, WILLIAM H.,	Memphis, Tenn.
CARY, ALFRED L.,	Milwaukee, Wis.
CARY, JOHN W.,	Milwaukee, Wis.
CARY, MELBERT B.,	New York, N. Y.
CHAMBERLAIN, D. H.,	New York, N. Y.
CHANDLER, ALFRED D.,	Boston, Mass.
CHARLTON, WALTER G.,	Savannah, Ga.
CHERRINGTON, THOMAS,	Ironton, O.
CHISHOLM, WALTER S.,	Savannah, Ga.
CLARK, GAYLORD B.,	Mobile, Ala.
CLARK, JAMES OLIVER,	New York, N. Y.
CLARK, THOMAS ALLEN,	New York, N. Y.
CLEAVES, NATHAN,	Portland, Me.
CLIFFORD, CHARLES W.,	New Bedford, Mass.

CLOPTON, DAVID,	Montgomery, Ala.
COHN, M. M.,	Little Rock, Ark.
COLE, GORDON E.,	St. Paul, Minn.
COLE, W. L.,	Parkersburg, W. Va.
COLLIER, M. DWIGHT,	New York, N. Y.
COLLINS, PATRICK A.,	Boston, Mass.
COLSTON, EDWARD,	Cincinnati, O.
CONELY, JOHN D.,	Detroit, Mich.
COLT, SAMUEL P.,	Bristol, R. I.
COLWELL, FRANCIS,	Providence, R. I.
COOLEY, THOMAS M.,	Ann Arbor, Mich.
COOPER, C. P.,	Jacksonville, Fla.
COOPER, EDMUND,	Shelbyville, Tenn.
COOPER, JOHN C.,	Jacksonville, Fla.
COOPER, WILLIAM F.,	Nashville, Tenn.
COWEN, JOHN K.,	Baltimore, Md.
COX, S. S.,	New York, N. Y.
CRAIGHEAD, S.,	Dayton, O.
CRAPO, WILLIAM W.,	New Bedford, Mass.
CRAWFORD, GEORGE L.,	Philadelphia, Pa.
CRAWFORD, W. L.,	Dallas, Tex.
CROSS, DAVID,	Manchester, N. H.
CROSS, E. J. D.,	Baltimore, Md.
CROWELL, CHARLES E.,	New York, N. Y.
CULLOM, SHELBY M.,	Springfield, Ill.
CUMMING, JOSEPH B.,	Augusta, Ga.
CUNNINGHAM, HENRY C.,	Savannah, Ga.
CUPPY, F. P.,	Washington, D. C.
CURRIER, FRANK D.,	E. Canaan, N. H.
CURTIS, BENJAMIN ROBBINS,	Boston, Mass.
CURTIS, JULIUS B.,	Stamford, Conn.
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DARLING, EDWARD P.,	Wilkesbarre, Pa.
DARLING, J. VAUGHAN,	Wilkesbarre, Pa.
DARLINGTON, JOSEPH J.,	Washington, D. C.
DAUGHERTY, M. A.,	Columbus, O.
DAVIDSON, THOMAS F.,	Covington, Ind.
DAVIDSON, WILLIAM A.,	Cincinnati, O.
DAVIE, GEORGE M.,	Louisville, Ky.
DAVIS, BLISS N.,	Danville, Vt.
DAVIS, DAVID,	Bloomington, Ill.
DAVIS, JOHN,	Lowell, Mass.

DAVIS, JOHN J.	Clarksburg, W. Va.
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DENT, THOMAS	Chicago, Ill.
DENDORE, GEORGE	New Orleans, La.
DESVY, ROBERT	St. Paul, Minn.
DICKINSON, DON M.	Detroit, Mich.
DICKINSON, J. M.	Nashville, Tenn.
DICKINSON, M. F., JR.	Boston, Mass.
DICKINSON, S. MEREDITH	Trenton, N. J.
DICKSON, HERBERT E.	New York, N. Y.
DILLON, JOHN F.	New York, N. Y.
DIXON, NATHAN F.	Westerly, R. I.
DOBSON, CHARLES L.	Kansas City, Mo.
DONALDSON, WILLIAM R.	St. Louis, Mo.
DORSHEIMER, WILLIAM	New York, N. Y.
DU BIGNON, FLEMING G.	Savannah, Ga.
DUDLEY, JAMES M.	Johnstown, N. Y.
DUFFIELD, HENRY M.	Detroit, Mich.
DUNHAM, CHARLES	Geneseo, Ill.
DU VAL, BENJAMIN T.	Fort Smith, Ark.
EATON, SHERBURNE R.	New York, N. Y.
EARLE, WILLIAM E.	Washington, D. C.
EDWALL, JAMES K.	Chicago, Ill.
EDWARDS, R. S.	Springfield, Ill.
ELLETT, HENRY T.	Memphis, Tenn.
ELLIOT, CHARLES A.	Washington, D. C.
ELLMAKER, NATHANIEL	Lancaster, Pa.
EMOTT, JAMES	New York, N. Y.
ENDICOTT, WILLIAM C.	Salem, Mass.
ENSON, JOSIAH D.	Duluth, Minn.
ESTES, BRADFORD M.	Memphis, Tenn.
EVANS, WALTER	Louisville, Ky.
EVARTS, WILLIAM M.	New York, N. Y.
FAIRBANKS, CHARLES W.	Indianapolis, Ind.
FALLIGANT, ROBERT	Savannah, Ga.
FARRAR, EDGAR H.	New Orleans, La.
FERRIS, JOHN W.	Emporia, Kan.
FELLOWS, JOSEPH W.	Manchester, N. H.
FENTRESS, JAMES	Bolivar, Tenn.
FERGUSON, E. A.	Cincinnati, O.
FIELD, DAVID DUDLEY	New York, N. Y.

FISHBACK, W. P.,	.	.	.	Indianapolis, Ind.
FISHER, WILLIAM A.,	.	.	.	Baltimore, Md.
FLEMMING, JAMES,	.	.	.	Jersey City, N. J.
FORCE, MANNING F.,	.	.	.	Cincinnati, O.
FOX, AUSTEN G.,	.	.	.	New York, N. Y.
FOX, WILLIAM H.,	.	.	.	Taunton, Mass.
FRANKLIN, THOMAS E.,	.	.	.	Lancaster, Pa.
FRAYSER, R. DUDLEY,	.	.	.	Memphis, Tenn.
FRENCH, WILLIAM B.,	.	.	.	Boston, Mass.
FRENCH, W. B.,	.	.	.	Saratoga Springs, N. Y.
FULTON, MARSHALL,	.	.	.	Denton, Tex.
GALT, SMITH P.,	.	.	.	St. Louis, Mo.
GANTT, THOMAS T.,	.	.	.	St. Louis, Mo.
GARNETT, HENRY WISE,	.	.	.	Washington, D. C.
GARNETT, THEODORE S.,	.	.	.	Norfolk, Va.
GARRARD, WILLIAM,	.	.	.	Savannah, Ga.
GARRETSON, A. Q.,	.	.	.	Jersey City, N. J.
GASTON, WILLIAM,	.	.	.	Boston, Mass.
GAUT, JOHN M.,	.	.	.	Nashville, Tenn.
GILBERT, LYMAN D.,	.	.	.	Harrisburg, Pa.
GILMORE, THOMAS,	.	.	.	New Orleans, La.
GLOVER, JOHN H.,	.	.	.	New York, N. Y.
GOBLE, L. SPENCER,	.	.	.	Newark, N. J.
GOODWIN, FRANK,	.	.	.	Boston, Mass.
GORMAN, CHARLES E.,	.	.	.	Providence, R. I.
GOULD, A. P.,	.	.	.	Thomaston, Me.
GOULD, O. B.,	.	.	.	Winona, Minn.
GRANGER, M. M.,	.	.	.	Zanesville, O.
GRAY, GEORGE,	.	.	.	Wilmington, Del.
GREEN, EDWIN P.,	.	.	.	Akron, O.
GREENE, ARNOLD,	.	.	.	Providence, R. I.
GREGORY, J. C.,	.	.	.	Madison, Wis.
GREGORY, JOHN P.,	.	.	.	Woonsocket, R. I.
GRESHAM, WALTER,	.	.	.	Galveston, Tex.
GRESHAM, WALTER Q.,	.	.	.	Indianapolis, Ind.
GRIFFIN, LEVI T.,	.	.	.	Detroit, Mich.
GRISWOLD, SENECA O.,	.	.	.	Cleveland, O.
GROESBECK, WILLIAM S.,	.	.	.	Cincinnati, O.
GROSS, JOSEPH P.,	.	.	.	Philadelphia, Pa.
GROSS, WILLIAM L.,	.	.	.	Springfield, Ill.
GRUBB, IGNATIUS C.,	.	.	.	Wilmington, Del.
GUNCKEL, LEWIS B.,	.	.	.	Dayton, O.

GUTHRIE, GEORGE W.,	Pittsburg, Pa.
GWINN, CHARLES J. M.,	Baltimore, Md.
HAHN, WILLIAM J.,	Minneapolis, Minn.
HALE, MATTHEW,	Albany, N. Y.
HALL, JOHN J.,	Akron, O.
HALSBY, JEREMIAH,	Norwich, Conn.
HAMBRELEY, WILLIAM,	Hartford, Conn.
HAMILTON, ALEXANDER,	Petersburg, Va.
HAMILTON, GEORGE EARNEST,	Washington, D. C.
HAMILTON, JOHN M.,	Springfield, Ill.
HAMMOND, N. J.,	Atlanta, Ga.
HAMMOND, WILLIAM G.,	St. Louis, Mo.
HANDLEY, JOHN,	Scranton, Pa.
HANDY, JOHN H.,	Baltimore, Md.
HANNA, JOHN F.,	Washington, D. C.
HARRISON, BENJAMIN,	Indianapolis, Ind.
HARRISON, RICHARD A.,	Columbus, O.
HART, CHARLES,	Providence, R. I.
HASKELL, THOMAS H.,	Portland, Me.
HATHEWAY, SIMON W.,	Boston, Mass.
HAY, MALCOLM,	Pittsburg, Pa.
HAYNES, DANIEL A.,	Duyton, O.
HEMENWAY, ALFRED,	Boston, Mass.
HEMPHILL, JOSEPH,	West Chester, Pa.
HENDERSON, J. B.,	St. Louis, Mo.
HENDERSON, HENRY P.,	Mason, Mich.
HENDRICKS, A. W.,	Indianapolis, Ind.
HENDRICKS, THOMAS A.,	Indianapolis, Ind.
HEREFORD, FRANK,	Union, W. Va.
HERMAN, HENRY M.,	New York, N. Y.
HEVERIN, JAMES H.,	Philadelphia, Pa.
HIGGINS, ANTHONY,	Wilmington, Del.
HILL, WALTER B.,	Macon, Ga.
HINKLEY, EDWARD OTIS,	Baltimore, Md.
HINKLEY, LYMAN G.,	Chelsea, Vt.
HITCHCOCK, HENRY,	St. Louis, Mo.
HOADLEY, GEORGE,	Cincinnati, O.
HOJGE, NICH,	Akron, O.
HOFFMAN, CHARLES W.,	Washington, D. C.
HOLMES, GEORGE F.,	Portland, Me.
HOOKE, DAVID G.,	Milwaukee, Wis.
HORD, OSCAR B.,	Indianapolis, Ind.

HORNER, JOHN J.,	Helena, Ark.
HOSMER, GEORGE S.,	Detroit, Mich.
HOUGH, WARWICK,	Jefferson City, Mo.
HOUE, GEORGE W.,	Dayton, O.
HOUSTON, LOCK E.,	Aberdeen, Miss.
HOWE, ARCHIBALD M.,	Boston, Mass.
HOWE, W. W.,	New Orleans, La.
HOWRY, CHARLES B.,	Oxford, Miss.
HUBBARD, CHARLES EUSTIS,	Boston, Mass.
HUDD, THOMAS R.,	Green Bay, Wis.
HUEY, SAMUEL B.,	Philadelphia, Pa.
HULL, AMOS G.,	New York, N. Y.
HUNT, CARLETON,	New Orleans, La.
HUNT, SAMUEL F.,	Cincinnati, O.
HURD, FRANCIS W.,	Boston, Mass.
HUTCHINS, WALDO,	New York, N. Y.
HUTCHINSON, JOHN A.,	Parkersburg, W. Va.
HYDE, ALVAN P.,	Hartford, Conn.
ISAACS, M. S.,	New York, N. Y.
JACKSON, HENRY,	Atlanta, Ga.
JENKINS, JAMES G.,	Milwaukee, Wis.
JEWETT, HUGH J.,	New York, N. Y.
JOHNSON, EDGAR M.,	Cincinnati, O.
JOHNSON, WILLIAM E.,	Woodstock, Vt.
JOHNSON, WILLIAM W.,	Ironton, O.
JOHNSTON, JAMES M.,	Washington, D. C.
JOHNSTON, SANDERS W.,	Washington, D. C.
JONES, CHARLES C., JR.,	Augusta, Ga.
JONES, CHARLES W.,	Pensacola, Fla.
JONES, ISAAC D.,	Baltimore, Md.
JONES, LEONARD A.,	Boston, Mass.
JORDAN, ISAAC M.,	Cincinnati, O.
JUDSON, FREDERICK N.,	St. Louis, Mo.
KAERCHER, GEORGE R.,	Philadelphia, Pa.
KAUFFMAN, A. J.,	Columbia, Pa.
KEASBEY, ANTHONY Q.,	Newark, N. J.
KEASBEY, GEORGE M.,	Newark, N. J.
KEHR, EDWARD C.,	St. Louis, Mo.
KELLOGG, STEPHEN W.,	Waterbury, Conn.
KENNARD, JOHN H.,	New Orleans, La.
KENT, CHARLES A.,	Detroit, Mich.
KEOGH, THOMAS B.,	Greensboro, N. C.

KERNAN, FRANCIS,	Utica, N. Y.
KING, RUFUS,	Cincinnati, O.
KINGSBURY, FREDERICK J.,	Waterbury, Conn.
KIRCHNER, OTTO,	Detroit, Mich.
KNIGHT, EDWARD B.,	Charleston, W. Va.
KNOTT, A. LEO,	Baltimore, Md.
KOERNER, GUSTAVE,	Belleville, Ill.
KRUTTSCHNITT, ERNEST B.,	New Orleans, La.
KULP, GEORGE B.,	Wilkesbarre, Pa.
LADD, NATH. W.,	Boston, Mass.
LADD, WILLIAM S.,	Lancaster, N. H.
LAMBERTON, C. L.,	Wilkesbarre, Pa.
LANCASTER, CHARLES C.,	Washington, D. C.
LAPHAM, BENJAMIN N.,	Providence, R. I.
LATHROP, GARDINER,	Kansas City, Mo.
LATROBE, JOHN H. B.,	Baltimore, Md.
LAWTON, ALEXANDER R.,	Savannah, Ga.
LAZARUS, H. L.,	New Orleans, La.
LEEDS, CHARLES C.,	New York, N. Y.
LEGENDRE, JAMES,	New Orleans, La.
LEIGH, JOSEPH E.,	Columbus, Miss.
LEVI, ALBERT L.,	Minneapolis, Minn.
LIBBY, CHARLES F.,	Portland, Me.
LISTER, CHARLES C.,	Philadelphia, Pa.
LITTLE, WILLIAM E.,	Tunkhannock, Pa.
LIVINGSTON, J. B.,	Lancaster, Pa.
LOGAN, THOMAS A.,	Cincinnati, O.
LOVELY, JOHN A.,	Albert Lea, Minn.
LUCAS, SOLOMON,	Norwich, Conn.
LYON, R. F.,	Macon, Ga.
MACFARLAND, W. W.,	New York, N. Y.
MACKALL, WILLIAM W., JR.,	Savannah, Ga.
MACKEY, WILLIAM H.,	Covington, Ky.
MACVEAGH, WAYNE,	Philadelphia, Pa.
MADILL, GEORGE A.,	St. Louis, Mo.
MANDERSON, CHARLES F.,	Omaha, Neb.
MARSH, FAYETTE,	Stillwater, Minn.
MARSHALL, JOSHUA N.,	Lowell, Mass.
MARSHALL, CHARLES,	Baltimore, Md.
MARSTON, GILMAN,	Exeter, N. H.
MASON, EDWARD G.,	Chicago, Ill.
MASON, JAMES,	Cleveland, O.

MASON, JOHN T. (JOHN T. MASON, R.), .	Baltimore, Md.
MATHEWS, ALBERT,	New York, N. Y.
MATTHEWS, STANLEY,	Cincinnati, O.
MEDDAUGH, ELIJAH W.,	Detroit, Mich.
MELDRIM, P. W.,	Savannah, Ga.
MELOY, WILLIAM A.,	Washington, D. C.
MERCER, GEORGE A.,	Savannah, Ga.
MERCER, GEORGE G.,	Philadelphia, Pa.
MERRICK, EDWIN T.,	New Orleans, La.
MERRICK, RICHARD T.,	Washington, D. C.
METZGER, THOMAS B.,	Allentown, Pa.
MERWIN, ELIAS,	Boston, Mass.
MILLER, FRANK H.,	Augusta, Ga.
MILLER, H. C.,	New Orleans, La.
MILLER, N. DU BOIS,	Philadelphia, Pa.
MITCHELL, JAMES T.,	Philadelphia, Pa.
MITCHELL, JOSEPH A. S.,	Goshen, Ind.
MOAK, N. C.,	Albany, N. Y.
MONAGHAN, ROBERT E.,	West Chester, Pa.
MONROE, WILLIAM A.,	Boston, Mass.
MOORE, JOHN M.,	Little Rock, Ark.
MOORE, GEORGE F.,	Montgomery, Ala.
MOORE, J. Z.,	Owensboro, Ky.
MOORMAN, H. C.,	Somerville, Tenn.
MORRIS, M. F.,	Washington, D. C.
MORRIS, S. W.,	Ironton, O.
MORSE, A. PORTER,	Washington, D. C.
MOULTON, S. W.,	Shelbyville, Ill.
MUNFORD, JAMES E.,	St. Louis, Mo.
MUNGER, WARREN,	Dayton, O.
MURPHY, D. F.,	Washington, D. C.
MURPHY, THEODORE D.,	Woodstock, Ill.
MYERS, JAMES J.,	Boston, Mass.
MYERS, NATHANIEL,	New York, N. Y.
MCATEE, JOHN L.,	Hagerstown, Md.
MCCALEB, E. HOWARD,	New Orleans, La.
MCCAMMON, JOSEPH K.,	Washington, D. C.
MCCARTER, THOMAS N.,	Newark, N. J.
MCCARTNEY, JAMES,	Springfield, Ill.
MCCLINTOCK, ANDREW T.,	Wilkesbarre, Pa.
MCCLINTOCK, W. T.,	Chillicothe, O.
MCCRADY, EDWARD, JR.,	Charleston, S. C.

MCCULLOUGH, JOHN G.,	.	.	.	N. Bennington, Vt.
McFARLAND, L. B.,	.	.	.	Memphis, Tenn.
MCGRATH, A. G.,	.	.	.	Charleston, S. C.
McINTOSH, DAVID G.,	.	.	.	Towsontown, Md.
McLEARY, J. H.,	.	.	.	San Antonio, Tex.
McNEAL, ALBERT T.,	.	.	.	Bolivar, Tenn.
NASH, STEPHEN P.,	.	.	.	New York, N. Y.
NEAL, HENRY S.	.	.	.	Ironton, O.
NEBEKER, LUCAS,	.	.	.	Covington, Ind.
NELSON, HOMER A.,	.	.	.	Poughkeepsie, N. Y.
NICOLL, DELANCEY,	.	.	.	New York, N. Y.
NOBLE, JOHN W.,	.	.	.	St. Louis, Mo.
NORTH, E. D.,	.	.	.	Lancaster, Pa.
NORTH, HUGH M.,	.	.	.	Columbia, Pa.
OLMSTEAD, AARON B.,	.	.	.	Saratoga Springs, N. Y.
ORENDORFF, ALFRED,	.	.	.	Springfield, Ill.
ORR, J. A.,	.	.	.	Columbus, Miss.
OUTERBRIDGE, ALBERT A.,	.	.	.	Philadelphia, Pa.
OVIATT, EDWARD,	.	.	.	Akron, O.
OWENS, GEORGE W.,	.	.	.	Savannah, Ga.
PAGE, HENRY F.,	.	.	.	Circleville, O.
PAGE, LECH R.,	.	.	.	Richmond, Va.
PALMER, HENRY W.,	.	.	.	Wilkesbarre, Pa.
PALMER, JOHN M.,	.	.	.	Springfield, Ill.
PARDEE, DON A.,	.	.	.	New Orleans, La.
PARDEE, HENRY E.,	.	.	.	New Haven, Conn.
PARKER, ALTON B.,	.	.	.	Kingston, N. Y.
PARKER, AMASA J.,	.	.	.	Albany, N. Y.,
PARKER, CORTLANDT,	.	.	.	Newark, N. J.
PARKER, JAMES,	.	.	.	New York, N. Y.
PARKER, R. WAYNE,	.	.	.	Newark, N. J.
PATTERSON, C. STUART,	.	.	.	Philadelphia, Pa.
PATTERSON, T. ELLIOTT,	.	.	.	Ilion, N. Y.
PAUL, NORMAN,	.	.	.	Woodstock, Vt.
PAYNE, ABRAHAM,	.	.	.	Providence, R. I.
PAYNE, JAMES G.,	.	.	.	Washington, D. C.
PEABODY, CHARLES A.,	.	.	.	New York, N. Y.
PECKHAM, FRANCIS B.,	.	.	.	Newport, R. I.
PENNYPACKER, CHARLES H.,	.	.	.	West Chester, Pa.
PENNYPACKER, SAMUEL W.,	.	.	.	Philadelphia, Pa.
PERKINS, SAMUEL C.,	.	.	.	Philadelphia, Pa.
PERRY, JOHN H.,	.	.	.	Southport, Conn.

PETTIT, SILAS W.,	.	.	.	Philadelphia, Pa.
PHIELPS, EDWARD J.,	.	.	.	Burlington, O.
• PHIELPS, WM. WALTER,	.	.	.	New York, N. Y.
PHILLIPS, GILBERT W.,	.	.	.	Putnam, Conn.
PIERCE, GEORGE W.,	.	.	.	Boston, Mass.
PIERCE, JAMES O.,	.	.	.	Memphis, Tenn.
PIKE, AUSTIN F.,	.	.	.	Franklin, N. H.
PINNEY, SILAS U.,	.	.	.	Madison, Wis.
PIRTLE, JAMES S.,	.	.	.	Louisville, Ky.
PLATT, JOHNSTON T.,	.	.	.	New Haven, Conn.
POCHÉ, F. P.,	.	.	.	New Orleans, La.
POLAND, LUKE P.,	.	.	.	St. Johnsbury, Vt.
POND, ASHLEY,	.	.	.	Detroit, Mich.
PORTER, CHARLES W.,	.	.	.	Montpelier, Vt.
PORTER, JOHN K.,	.	.	.	New York, N. Y.
PORTER, WILLIAM A.,	.	.	.	Philadelphia, Pa.
POWERS, CHARLES E.,	.	.	.	Boston, Mass.
PRATT, WALLACE,	.	.	.	Kansas City, Mo.
PRESTON, WILLIAM,	.	.	.	Lexington, Ky.
PRICE, J. SERGEANT,	.	.	.	Philadelphia, Pa.
PRICHARD, FRANK P.,	.	.	.	Philadelphia, Pa.
PRIME, RALPH E.,	.	.	.	Yonkers, N. Y.
PROUT, JOHN,	.	.	.	Rutland, Vt.
PRYOR, ROGER A.,	.	.	.	Brooklyn, N. Y.
PUTNAM, HENRY W.,	.	.	.	Boston, Mass.
RANDALL, E. M.,	.	.	.	Jacksonville, Fla.
RANDOLPH, JOSEPH F.,	.	.	.	Jersey City, N. J.
RANKIN, JOHN H.,	.	.	.	St. Louis, Mo.
RANNEY, HENRY C.,	.	.	.	Cleveland, O.
RANNEY, RUFUS P.,	.	.	.	Cleveland, O.
RAWLE, FRANCIS,	.	.	.	Philadelphia, Pa.
RAWLE, WM. HENRY,	.	.	.	Philadelphia, Pa.
REED, HENRY,	.	.	.	Philadelphia, Pa.
REEVE, FELIX A.,	.	.	.	Washington, D. C.
REYNOLDS, R. O.,	.	.	.	Aberdeen, Miss.
REYNOLDS, SAMUEL H.,	.	.	.	Lancaster, Pa.
RICHARDSON, DANIEL S.,	.	.	.	Lowell, Mass.
RICHARDSON, GEORGE F.,	.	.	.	Lowell, Mass.
RICHEY, AUGUSTUS G.,	.	.	.	Trenton, N. J.
RIGGS, JAMES M.,	.	.	.	Winchester, Ill.
RIPLEY, JAMES M.,	.	.	.	Providence, R. I.
ROBB, SAMUEL,	.	.	.	Philadelphia, Pa.

ROBERTS, DANIEL.	Burlington, Vt.
ROBERTS, JOSEPH E., JR.	Upper Marlboro, Md.
ROBERTS, R. BIDDLE.	Chicago, Ill.
ROBERTSON, A. H.	Baltimore, Md.
ROBERTSON, WILLIAM J.	Charlottesville, Va.
ROBERTS, WILLIAM G.	Providence, R. I.
ROGERS, GEORGE W.	Norristown, Pa.
ROGERS, HENRY WARE.	Ann Arbor, Mich.
ROGERS, SHERMAN S.	Buffalo, N. Y.
ROMEYN, THEODORE.	Detroit, Mich.
ROME, U. M.	Little Rock, Ark.
RUSSELL, ALFRED.	Detroit, Mich.
RUSSELL, TALCOTT H.	New Haven, Conn.
RUSSELL, WILLIAM G.	Boston, Mass.
RUSSELL, W. H. H.	New York, N. Y.
SANDERS, JOHN B.	St. Paul, Minn.
SANDERS, WALTER H.	St. Paul, Minn.
SANDERS, DALLAS.	Philadelphia, Pa.
SCHENCK, ABRAHAM V.	New Brunswick, N. J.
SCHLEY, BRADLEY G.	Milwaukee, Wis.
SCHONMAKER, AUGUSTUS, JR.	Kingston, N. Y.
SCOTT, C. S.	Lexington, Ky.
SCUDDER, HENRY J.	New York, N. Y.
SEARS, PHILIP H.	Boston, Mass.
SEBERT, W. N.	New Bloomfield, Pa.
SELDON, JOHN.	Washington, D. C.
SENNER, THOMAS J.	New Orleans, La.
SEMPER, HENRY C.	Montgomery, Ala.
SEYMOUR, EDWARD W.	Litchfield, Conn.
SHACK, FERDINAND.	New York, N. Y.
SHARP, GEORGE M.	Baltimore, Md.
SHARP, ISAAC S.	Philadelphia, Pa.
SHATTUCK, GEORGE O.	Boston, Mass.
SHAW, R. K.	Marietta, O.
SHAW, WILLIAM G.	Burlington, Vt.
SHEPFIELD, WILLIAM P.	Newport, R. I.
SHEPARD, ELLIOTT F.	New York, N. Y.
SHERMAN, E. B.	Chicago, Ill.
SIMPSON, J. G.	Bulverde, N. J.
SIMPSON, JOSEPH.	St. Louis, Mo.
SIRAS, GEORGE, JR.	Pittsburg, Pa.
SIRAS, OLIVER P.	Dubuque, Ia.

SHIRLEY, JOHN M.,	. . .	Andover, N. H.
SHOEMAKER, L. D.,	. . .	Wilkesbarre, Pa.
SHOEMAKER, MURRAY C.,	. . .	Cincinnati, O.
SIMONTON, C. H.,	. . .	Charleston, S. C.
SIMS, W. H.,	. . .	Columbus, Miss.
SLAYMAKER, AMOS,	. . .	Lancaster, Pa.
SMALL, ALBERT,	. . .	Hagerstown, Md.
SMALLEY, B. B.,	. . .	Burlington, Vt.
SMITH, CHAUNCEY,	. . .	Boston, Mass.
SMITH, LUTHER R.,	. . .	Mount Sterling, Ala.
SMITH, WALTER GEORGE,	. . .	Philadelphia, Pa.
SMYTHE, AUGUSTINE T.,	. . .	Charleston, S. C.
SOMMERVILLE, J. B.,	. . .	Wellsburg, W. Va.
SOUTHARD, CHARLES B.,	. . .	Boston, Mass.
SPAULDING, JOHN,	. . .	Boston, Mass.
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STANLEY, CLINTON W.,	. . .	Manchester, N. H.
STANTON, LEWIS E.,	. . .	Hartford, Conn.
STAPLES, JOHN N.,	. . .	Greensboro, N. C.
STERNE, SIMON,	. . .	New York, N. Y.
STETSON, CHARLES P.,	. . .	Bangor, Me.
STEVENS, HIRAM F.,	. . .	St. Paul, Minn.
STEVENSON, JOHN W.,	. . .	Covington, Ky.
STEWART, JOHN,	. . .	Chambersburg, Pa.
STEWART, W. F. BAY,	. . .	York, Pa.
STICKNEY, ALBERT,	. . .	New York, N. Y.
STILLWELL, L.,	. . .	Osage Mission, Kan.
STOCKBRIDGE, HENRY,	. . .	Baltimore, Md.
STOCKDALE, F. S.,	. . .	Cuero, Tex.
STOREY, MOORFIELD,	. . .	Boston, Mass.
STORROW, JAMES J.,	. . .	Boston, Mass.
STORRS, EMERY A.,	. . .	Chicago, Ill.
STREET, ROBERT G.,	. . .	Galveston, Tex.
STROUT, A. A.,	. . .	Portland, Me.
STURGES, E. B.,	. . .	Scranton, Pa.
SULLIVAN, ALGERNON S.,	. . .	New York, N. Y.
SWAYNE, WAGER,	. . .	New York, N. Y.
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TAUSSIG, JAMES,	. . .	St. Louis, Mo.
TAYLOR, JOHN D.,	. . .	New York, N. Y.

TAYLOR, JOHN W.,	Newark, N. J.
TAYLOR, R. S.,	Fort Wayne, Ind.
TEESE, FREDERICK H.,	Newark, N. J.
THOMPSON, SEYMOUR D.,	St. Louis, Mo.
THORNTON, R. A.,	Lexington, Ky.
THURBER, HENRY T.,	Detroit, Mich.
THURSTON, BENJAMIN F.,	Providence, R. I.
THURSTON, JOHN D.,	Providence, R. I.
THWEATT, P. O.,	Helena, Ark.
TILLINGHAST, JAMES,	Providence, R. I.
TODD, A. J.,	New York, N. Y.
TOMPKINS, HENRY B.,	Atlanta, Ga.
TORREY, JAY L.,	St. Louis, Mo.
TOTTEN, ENOCH,	Washington, D. C.
TOWNSEND, WASHINGTON,	West Chester, Pa.
TOWNSEND, WILLIAM K.,	New Haven, Conn.
TRABUE, E. F.,	Louisville, Ky.
TREADWELL, JOHN P.,	Boston, Mass.
TROY, D. S.,	Montgomery, Ala.
TRUMBULL, LYMAN,	Chicago, Ill.
TUCK, SOMERVILLE P.,	New York, N. Y.
TUCKER, J. RANDOLPH,	Lexington, Va.
TUPPER, A. P.,	Middlebury, Vt.
TURNER, EDWARD W.,	Plattsburgh, Mo.
TUTHILL, RICHARD S.,	Chicago, Ill.
UPSON, WILLIAM H.,	Akron, O.
USHER, EDWARD PRESTON,	Boston, Mass.
VANDERPOEL, A. J.,	New York, N. Y.
VANSLYCKE, NICHOLAS,	Providence, R. I.
VAUX, RICHARD,	Philadelphia, Pa.
VENABLE, RICHARD M.,	Baltimore, Md.
VILAS, WILLIAM F.,	Madison, Wis.
VREDENBURGH, JAMES B.,	Jersey City, N. J.
VROOM, GARRET D. W.,	Trenton, N. J.
WADDELL, WILLIAM B.,	West Chester, Pa.
WAELDER, JACOB,	San Antonio, Tex.
WAGNER, SAMUEL,	Philadelphia, Pa.
WAIT, ALBERT S.,	Newport, N. H.
WALKER, CHARLES J.,	Detroit, Mich.
WALKER, SAMUEL P.,	Memphis, Tenn.
WALKER, W. H.,	Ludlow, Vt.
WARD, JOHN E.,	New York, N. Y.

WARNER, JOSEPH B.,	Boston, Mass.
WATROUS, GEORGE H.,	New Haven, Conn.
WAUL, T. N.,	Galveston, Tex.
WEADOCK, THOMAS A. E.,	Bay City, Mich.
WEART, JACOB,	Jersey City, N. J.
WEBB, NATHAN,	Portland, Me.
WEBB, WILLIAM B.,	Washington, D. C.
WEEKS, WILLIAM R.,	Newark, N. J.
WEGG, DAVID S.,	Milwaukee, Wis.
WELLS, H. H.,	Washington, D. C.
WELLS, WILLIAM P.,	Detroit, Mich.
WEST, CHARLES N.,	Savannah, Ga.
WEST, C. S.,	Austin, Tex.
WEST, MAHLON R.,	Hartford, Conn.
WHEELER, EVERETT P.,	New York, N. Y.
WHITEHOUSE, FRED. C.,	New York, N. Y.
WHITFIELD, F. E.,	Corinth, Miss.
WHITTAKER, EGBERT,	Saugerties, N. Y.
WHITTLE, L. N.,	Macon, Ga.
WILLARD, EDWARD N.,	Scranton, Pa.
WILLCOX, W. F.,	Deep River, Conn.
WILLIAMS, EDWARD CALVIN,	Baltimore, Md.
WILLIAMS, WASHINGTON B.,	Jersey City, N. J.
WILLIE, A. H.,	Galveston, Tex.
WILLIS, BENJAMIN A.,	New York, N. Y.
WILLISTON, W. C.,	Redwing, Minn.
WILLSON, A. E.,	Louisville, Ky.
WILMER, SKIPWITH,	Baltimore, Md.
WILMER, W. M.,	New York, N. Y.
WILSON, F. A.,	Bangor, Me.
WILSON, JOHN R.,	Indianapolis, Ind.
WILSON, NATHANIEL,	Washington, D. C.
WILSON, THOMAS,	Winona, Minn.
WILSON, WILLIAM C.,	Lafayette, Ind.
WILSON, WILLIAM R.,	Elizabeth, N. J.
WILTBANK, WILLIAM W.,	Philadelphia, Pa.
WING, JOSEPH A.,	Montpelier, Vt.
WINKLER, FREDERICK C.,	Milwaukee, Wis.
WITHROW, JAMES E.,	St. Louis, Mo.
WOLVERTON, SIMON P.,	Sunbury, Pa.
WOOD, R. H.,	Bolivar, Tenn.
WOODRUFF, GEORGE M.,	Litchfield, Conn.

WOODRUFF, ROBERT S.,	.	.	.	Trenton, N. J.
WOODWARD, CHARLES F.,	.	.	.	Bangor, Me.
WOODWARD, STANLEY,	.	.	.	Wilkesbarre, Pa.
WOOLWORTH, J. M.,	.	.	.	Omaha, Neb.
WRIGHT, GEORGE G.,	.	.	.	Des Moines, Ia.
YOUNG, EDMOND S.,	.	.	.	Dayton, O.
YOUNG, GEORGE B.,	.	.	.	St. Paul, Minn.
YOUNG, HENRY E.,	.	.	.	Charleston, S. C.
ZEIGLER, CHARLES F.,	.	.	.	Philadelphia, Pa.

MEMBERS—AUGUST, 1884-1885.

ALABAMA.

BRAGG, WALTER L.,	.	.	.	Montgomery.
BUELL, DAVID,	.	.	.	Greenville.
CLARK, GAYLORD B.,	.	.	.	Mobile.
CLOPTON, DAVID,	.	.	.	Montgomery.
MOORE, GEORGE F.,	.	.	.	Montgomery.
SEMPLE, HENRY C.,	.	.	.	Montgomery.
SMITH, LUTHER R.,	.	.	.	Mount Sterling.
TROY, D. S.,	.	.	.	Montgomery.

ARKANSAS.

BENJAMIN, M. W.,	.	.	.	Little Rock.
COHN, M. M.,	.	.	.	Little Rock.
DU VAL, BENJAMIN T.,	.	.	.	Fort Smith.
HORNER, JOHN J.,	.	.	.	Helena.
MOORE, JOHN M.,	.	.	.	Little Rock.
ROSE, U. M.,	.	.	.	Little Rock.
TAPPAN, JAMES C.,	.	.	.	Helena.
THWEATT, P. O.,	.	.	.	Helena.

CONNECTICUT.

BALDWIN, SIMEON E.,	.	.	.	New Haven.
BREWSTER, LYMAN D.,	.	.	.	Danbury.
CURTIS, JULIUS B.,	.	.	.	Stamford.
HAISEY, JEREMIAH,	.	.	.	Norwich.
HAMERSLEY, WILLIAM,	.	.	.	Hartford.
HYDE, ALVAN P.,	.	.	.	Hartford.
KELLOGG, STEPHEN W.,	.	.	.	Waterbury.
KINGSBURY, FREDERICK J.,	.	.	.	Waterbury.
LUCAS, SOLOMON,	.	.	.	Norwich.
PARDEE, HENRY E.,	.	.	.	New Haven.
PERRY, JOHN H.,	.	.	.	Southport.
PHILLIPS, GILBERT W.,	.	.	.	Putnam.
PLATT, JOHNSON T.,	.	.	.	New Haven.
RUSSELL, TALCOTT H.,	.	.	.	New Haven.

CONNECTICUT—Continued.

SEYMOUR, EDWARD W.,	Litchfield.
STANTON, LEWIS E.,	Hartford.
TOWNSEND, WILLIAM K.,	New Haven.
WATROUS, GEORGE H.,	New Haven.
WEST, MAHLON R.,	Hartford.
WILLCOX, W. F.,	Deep River.
WOODRUFF, GEORGE M.,	Litchfield.

DELAWARE.

BATES, GEORGE H.,	Wilmington.
BAYARD, THOMAS F.,	Wilmington.
GRAY, GEORGE,	Wilmington.
GRUBB, IGNATIUS C.,	Wilmington.
HIGGINS, ANTHONY,	Wilmington.

DISTRICT OF COLUMBIA.

APPLEBY, GEORGE F.,	Washington.
ASHTON, J. HUBLEY,	Washington.
BOND, S. R.,	Washington.
BROWNING, FRANK T.,	Washington.
CUPPY, F. P.,	Washington.
DARLINGTON, JOSEPH J.,	Washington.
EARLE, WILLIAM E.,	Washington.
ELLIOT, CHARLES A.,	Washington.
GARNETT, HENRY WISE,	Washington.
HAMILTON, GEORGE EARNEST,	Washington.
HANNA, JOHN F.,	Washington.
HOFFMAN, CHARLES W.,	Washington.
JOHNSTON, JAMES M.,	Washington.
JOHNSTON, SANDERS W.,	Washington.
LANCASTER, CHARLES C.,	Washington.
MCCAMMON, JOSEPH K.,	Washington.
MELoy, WILLIAM A.,	Washington.
MERRICK, RICHARD T.,	Washington.
MORRIS, M. F.,	Washington.
MORSE, A. PORTER,	Washington.
MURPHY, D. F.,	Washington.
PAYNE, JAMES G.,	Washington.
REEVE, FELIX A.,	Washington.
SELDEN, JOHN,	Washington.
TOTTEN, ENOCH,	Washington.

DISTRICT OF COLUMBIA—Continued.

WEBB, WILLIAM B.,	Washington.
WELLS, H. H.,	Washington.
WILSON, NATHANIEL,	Washington.

FLORIDA.

COOPER, C. P.,	Jacksonville.
COOPER, JOHN C.,	Jacksonville.
JONES, CHARLES W.,	Pensacola.
RANDALL, E. M.,	Jacksonville.

GEORGIA.

ADAMS, SAMUEL B.,	Savannah.
ANDERSON, CLIFFORD,	Macon.
BACON, AUGUSTUS O.,	Macon.
BARROW, POPE,	Athens.
BLACK, J. C. C.,	Augusta.
CHARLTON, WALTER G.,	Savannah.
CHISHOLM, WALTER S.,	Savannah.
CUMMING, JOSEPH B.,	Augusta.
CUNNINGHAM, HENRY C.,	Savannah.
DE BIGNON, FLEMING G.,	Savannah.
FALLIGANT, ROBERT,	Savannah.
GARRARD, WILLIAM,	Savannah.
HAMMOND, N. J.,	Atlanta.
HILL, WALTER B.,	Macon.
JACKSON, HENRY,	Atlanta.
JONES, CHARLES C., JR.,	Augusta.
LAWTON, ALEXANDER R.,	Savannah.
LYON, R. F.,	Macon.
MACKALL, WILLIAM W., JR.,	Savannah.
MELDRIM, P. W.,	Savannah.
MERCER, GEORGE A.,	Savannah.
MILLER, FRANK H.,	Augusta.
OWENS, GEORGE W.,	Savannah.
TOMPKINS, HENRY B.,	Atlanta.
WEST, CHARLES N.,	Savannah.
WHITTLE, L. N.,	Macon.

ILLINOIS.

AYER, B. F.,	Chicago.
BLACK, J. C.,	Danville.

ILLINOIS—Continued.

BONNEY, C. C.,	Chicago.
CULLOM, SHELBY M.,	Springfield.
DAVIS, DAVID,	Bloomington.
DENT, THOMAS,	Chicago.
DUNHAM, CHARLES,	Geneseo.
EDSALL, JAMES K.,	Chicago.
EDWARDS, B. S.,	Springfield.
GROSS, WILLIAM L.,	Springfield.
HAMILTON, JOHN M.,	Springfield.
KOERNER, GUSTAVE,	Belleville.
MASON, EDWARD G.,	Chicago.
MCCARTNEY, JAMES,	Springfield.
MOULTON, S. W.,	Shelbyville.
MURPHY, THEODORE D.,	Woodstock.
ORENDORFF, ALFRED,	Springfield.
PALMER, JOHN M.,	Springfield.
RIGGS, JAMES M.,	Winchester.
ROBERTS R. BIDDLE,	Chicago.
SHERMAN, E. B.,	Chicago.
STORRS, E. A.,	Chicago.
TRUMBULL, LYMAN,	Chicago.
TUTHILL, RICHARD S.,	Chicago.

INDIANA.

ALDRICH, CHARLES H.,	Fort Wayne.
BAKER, JOHN H.,	Goshen.
BUTLER, JOHN M.,	Indianapolis.
DAVIDSON, THOMAS F.,	Covington.
FAIRBANKS, CHARLES W.,	Indianapolis.
FISHBACK, W. P.,	Indianapolis.
GRESHAM, WALTER Q.,	Indianapolis.
HARRISON, BENJAMIN,	Indianapolis.
HENDRICKS, A. W.,	Indianapolis.
HENDRICKS, THOMAS A.,	Indianapolis.
HORD, OSCAR B.,	Indianapolis.
MITCHELL, JOSEPH A. S.,	Goshen.
NEBEKER, LUCAS,	Covington.
TAYLOR, R. S.,	Fort Wayne.
WILSON, JOHN R.,	Indianapolis.
WILSON, WILLIAM C.,	Lafayette.

IOWA.

SHIRAS, OLIVER P.,	Dubuque.
WRIGHT, GEORGE G.,	Des Moines.

KANSAS.

FEDGIAN, JOHN W.,	Emporia.
STILLWELL, L.,	Osage Mission.

KENTUCKY.

BRECKENRIDGE, WM. C. P.,	Lexington.
BROWN, JOHN MASON,	Louisville.
BRYAN, JAMES W.,	Covington.
BUCKNER, B. F.,	Lexington.
DAVIE, GEORGE M.,	Louisville.
EVANS, WALTER,	Louisville.
MACKAY, WILLIAM H.,	Covington.
MOORE, J. Z.,	Owensboro.
PHILLIPS, JAMES S.,	Louisville.
PRESTON, WILLIAM,	Lexington.
SCOTT, C. S.,	Lexington.
STEVENSON, JOHN W.,	Covington.
THORNTON, R. A.,	Lexington.
TRABUE, E. F.,	Louisville.
WILSON, A. E.,	Louisville.

LOUISIANA.

ACKLEN, JOSEPH H.,	Franklin.
RAYNE, THOMAS L.,	New Orleans.
BENEDICT, W. S.,	New Orleans.
BLANC, SAMUEL P.,	New Orleans.
BREAUX, G. A.,	New Orleans.
BRUCE, A. G.,	New Orleans.
DENEGRE, GEORGE,	New Orleans.
FARRAR, EDGAR H.,	New Orleans.
GILMORE, THOMAS,	New Orleans.
HOWE, W. W.,	New Orleans.
HUNT, CARLETON,	New Orleans.
KENNARD, JOHN H.,	New Orleans.
KRUTSCHNITT, ERNEST B.,	New Orleans.
LAZARUS, H. L.,	New Orleans.
LEGENDRE, JAMES,	New Orleans.
MCCALDER, E. HOWARD,	New Orleans.

LOUISIANA—Continued.

MERRICK, EDWIN T.,	.	.	.	New Orleans.
MILLER, H. C.,	.	.	.	New Orleans.
PARDEE, DON A.,	.	.	.	New Orleans.
POCHÉ, F. P.,	.	.	.	New Orleans.
SEMMIS, THOMAS J.,	.	.	.	New Orleans.

MAINE.

BAKER, ORVILLE D.	.	.	.	Augusta.
CLEAVES, NATHAN,	.	.	.	Portland.
GOULD, A. P.,	.	.	.	Thomaston.
HASKELL, THOMAS H.,	.	.	.	Portland.
HOLMES, GEORGE F.,	.	.	.	Portland.
LIBBY, CHARLES F.,	.	.	.	Portland.
STETSON, CHARLES P.,	.	.	.	Bangor.
STROUT, A. A.,	.	.	.	Portland.
WEBB, NATHAN,	.	.	.	Portland.
WILSON, F. A.,	.	.	.	Bangor.
WOODWARD, CHARLES F.,	.	.	.	Bangor.

MARYLAND.

ALBERT, TALBOT J.,	.	.	.	Baltimore.
ALEXANDER, JULIAN J.,	.	.	.	Baltimore.
BEASTEN, CHARLES, JR.,	.	.	.	Baltimore.
BONAPARTE, CHARLES J.,	.	.	.	Baltimore.
BROWN, SEBASTIAN,	.	.	.	Baltimore.
COWEN, JOHN K.,	.	.	.	Baltimore.
CROSS, E. J. D.,	.	.	.	Baltimore.
FISHER, WILLIAM A.,	.	.	.	Baltimore.
GWINN, CHARLES J. M.,	.	.	.	Baltimore.
HANDY, JOHN H.,	.	.	.	Baltimore.
HUNKLEY, EDWARD OTIS,	.	.	.	Baltimore.
JONES, ISAAC D.,	.	.	.	Baltimore.
KNOTT, A. LEO,	.	.	.	Baltimore.
LATROBE, JOHN H. B.,	.	.	.	Baltimore.
MARSHALL, CHARLES,	.	.	.	Baltimore.
MASON, JOHN T. (JOHN T. MASON, R.),	.	.	.	Baltimore.
MCATEE, JOHN L.,	.	.	.	Hagerstown.
MCINTOSH, DAVID G.,	.	.	.	Towson town.
ROBERTS, JOSEPH K., JR.,	.	.	.	Upper Marlboro.
ROBERTSON, A. H.,	.	.	.	Baltimore.
SHARP, GEORGE M.,	.	.	.	Baltimore.

MARYLAND—Continued.

SMALL, ALBERT,	Hagerstown.
STOCKBRIDGE, HENRY,	Baltimore.
VENABLE, RICHARD M.,	Baltimore.
WILLIAMS, EDWARD CALVIN,	Baltimore.
WILMER, SKIPWITH,	Baltimore.

MASSACHUSETTS.

ABBOTT, J. C.,	Lowell.
ALLEN, STILLMAN B.,	Boston.
BALDWIN, G. W.,	Boston.
BARTLETT, SIDNEY,	Boston.
BELL, C. U.,	Lawrence.
BENNETT, EDMUND H.,	Taunton.
BRALEY, HENRY K.,	Fall River.
BROOKS, FRANCIS A.,	Boston.
BULLOCK, A. G.,	Worcester.
CHANDLER, ALFRED D.,	Boston.
CLIFFORD, CHARLES W.,	New Bedford.
COLLINS, PATRICK A.,	Boston.
CRAPO, WILLIAM W.,	New Bedford.
CURTIS, BENJAMIN BOBBINS,	Boston.
DAVIS, JOHN,	Lowell.
DICKINSON, M. F., JR.,	Boston.
ENDICOTT, WILLIAM C.,	Salem.
FOX, WILLIAM H.,	Taunton.
FRENCH, WILLIAM B.,	Boston.
GASTON, WILLIAM,	Boston.
GOODWIN, FRANK,	Boston.
HATHEWAY, SIMON W.,	Boston.
HEMENWAY, ALFRED,	Boston.
HOWE, ARCHIBALD M.,	Boston.
HUBBARD, CHARLES EUSTIS,	Boston.
HURD, FRANCIS W.,	Boston.
JONES, LEONARD A.,	Boston.
LADD, NATH. W.,	Boston.
MARSHALL, JOSHUA N.,	Boston.
MERWIN, ELIAS,	Boston.
MONROE, WILLIAM A.,	Boston.
MYERS, JAMES J.,	Boston.
PIERCE, GEORGE W.,	Boston.
POWERS, CHARLES E.,	Boston.

MASSACHUSETTS—Continued.

PUTNAM, HENRY W.,	Boston.
RICHARDSON, DANIEL S.,	Lowell.
RICHARDSON, GEORGE F.,	Lowell.
RUSSELL, WILLIAM G.,	Boston.
SEARS, PHILIP H.,	Boston.
SLATTUCK, GEORGE O.,	Boston.
SMITH, CHAUNCEY,	Boston.
SOUTHARD, CHARLES B.,	Boston.
SPAULDING, JOHN,	Boston.
STOREY, MOORFIELD,	Lowell.
STORROW, JAMES J.,	Boston.
SWIFT, M. G. B.,	Fall River.
TREADWELL, JOHN P.,	Boston.
USHER, EDWARD PRESTON,	Boston.
WARNER, JOSEPH B.,	Boston.

MICHIGAN.

ATKINSON, O'BRIEN J.,	Port Huron.
BAKER, HERBERT L.,	Detroit.
BALL, DANIEL H.,	Marquette.
BROWN, HENRY B.,	Detroit.
CONELY, JOHN D.,	Detroit.
COOLEY, THOMAS M.,	Ann Arbor.
DICKINSON, DON M.,	Detroit.
DUFFIELD, HENRY M.,	Detroit.
GRIFFIN, LEVI T.,	Detroit.
HENDERSON, HENRY P.,	Mason.
HOSMER, GEORGE S.,	Detroit.
KENT, CHARLES A.,	Detroit.
KIRCHNER, OTTO,	Detroit.
MEDDAUGH, ELIJAH W.,	Detroit.
POND, ASHLEY,	Detroit.
ROGERS, HENRY WADE,	Ann Arbor.
ROMEYN, THEODORE,	Detroit.
RUSSELL, ALFRED,	Detroit.
THURBER, HENRY T.,	Detroit.
WALKER, CHARLES J.,	Detroit.
WEADOCK, THOMAS A. E.,	Bay City.
WELDS, WILLIAM P.,	Detroit.

MINNESOTA.

BENTON, REUBEN C.,	Minneapolis.
COLE, GORDON E.,	St. Paul.
DESTY, ROBERT,	St. Paul.
ENSIGN, JOSIAH D.,	Duluth.
GOULD, O. B.,	Winona.
HAUS, WILLIAM J.,	Minneapolis.
LEVI, ALBERT L.,	Minneapolis.
LOVELY, JOHN A.,	Albert Lea.
MARSH, FAYETTE,	Stillwater.
SANBORN, JOHN B.,	St. Paul.
SANBORN, WALTER H.,	St. Paul.
STEVENS, HIRAM F.,	St. Paul.
WILLISTON, W. C.,	Redwing.
WILSON, THOMAS,	Winona.
YOUNG, GEORGE B.,	St. Paul.

MISSISSIPPI.

HOUSTON, LOCK E.,	Aberdeen.
HOWRY, CHARLES B.,	Oxford.
LEIGH, JOSEPH E.,	Columbus.
ORR, J. A.,	Columbus.
REYNOLDS, R. O.,	Aberdeen.
SIMS, W. H.,	Columbus.
WHITFIELD, F. E.,	Corinth.

MISSOURI.

BARCLAY, SHEPARD,	St. Louis.
BRECKENRIDGE, SAMUEL M.,	St. Louis.
BROADHEAD, JAMES O.,	St. Louis.
DOHSON, CHARLES L.,	Kansas City.
DONALDSON, WILLIAM R.,	St. Louis.
GALT, SMITH P.,	St. Louis.
GANTT, THOMAS T.,	St. Louis.
HAMMOND, WILLIAM G.,	St. Louis.
HENDERSON, J. B.,	St. Louis.
HITCHCOCK, HENRY,	St. Louis.
HOUGH, WARWICK,	Jefferson City.
JUDSON, FREDERICK N.,	St. Louis.
KEHR, EDWARD C.,	St. Louis.
LATHROP, GARDINER,	Kansas City.
MADILL, GEORGE A.,	St. Louis.

MISSOURI—Continued.

MUNFORD, JAMES E.,	. . .	St. Louis.
NOBLE, JOHN W.,	. . .	St. Louis.
PHATT, WALLACE,	. . .	Kansas City.
RANKIN, JOHN H.,	. . .	St. Louis.
SHIPPEN, JOSEPH,	. . .	St. Louis.
TAUSSIG, JAMES,	. . .	St. Louis.
THOMPSON, SEYMOUR D.,	. . .	St. Louis.
TORREY, JAY L.,	. . .	St. Louis.
TURNER, EDWARD W.,	. . .	Plattsburgh.
WITHROW, JAMES E.,	. . .	St. Louis.

NEBRASKA.

MANDERSON, CHARLES F.,	. . .	Omaha.
WOOLWORTH, J. M.,	. . .	Omaha.

NEW HAMPSHIRE.

ATHERTON, HENRY B.,	. . .	Nashua.
BINGHAM, HARRY,	. . .	Littleton.
BURNHAM, HENRY E.,	. . .	Manchester.
CROSS, DAVID,	. . .	Manchester.
CURRIER, FRANK D.,	. . .	E. Canaan.
FELLOWS, JOSEPH W.,	. . .	Manchester.
LADD, WILLIAM S.,	. . .	Lancaster.
MARSTON, GILMAN,	. . .	Exeter.
PIKE, AUSTIN F.,	. . .	Franklin.
SHIRLEY, JOHN M.,	. . .	Andover.
STANLEY, CLINTON W.,	. . .	Manchester.
WAIT, ALBERT S.,	. . .	Newport.

NEW JERSEY.

ALLEN, ROBERT, JR.,	. . .	Red Bank.
BERGEN, FRANK,	. . .	Elizabeth.
BOCHERLING, CHARLES,	. . .	Newark.
BUCHANAN, JAMES,	. . .	Trenton.
DICKINSON, S. MEREDITH,	. . .	Trenton.
FLEMMING, JAMES,	. . .	Jersey City.
GARRETSON, A. Q.,	. . .	Jersey City.
GOBLE, L. SPENCER,	. . .	Newark.
KEASBEY, ANTHONY Q.,	. . .	Newark.
KEASBEY, GEORGE M.,	. . .	Newark.
McCARTER, THOMAS N.,	. . .	Newark.

NEW JERSEY—Continued.

PARKER, CORTLANDT,	Newark.
PARKER, R. WAYNE,	Newark.
RANDOLPH, JOSEPH F.,	Jersey City.
RICHEY, AUGUSTUS G.,	Trenton.
SCHENCK, ABRAM V.,	New Brunswick.
SHIPMAN, J. G.,	Belvidere.
TAYLOR, JOHN W.,	Newark.
TEESE, FREDERICK H.,	Newark.
VREDENBURG, JAMES B.,	Jersey City.
VROOM, GARRET D. W.,	Trenton.
WEART, JACOB,	Jersey City.
WEEKS, WILLIAM R.,	Newark.
WILLIAMS, WASHINGTON B.,	Jersey City.
WILSON, WM. R.,	Elizabeth.
WOODRUFF, ROBERT S.,	Trenton.

NEW YORK.

BAKER, ASHLEY D. L.,	Gloversville.
BELLINGER, LEWIS H.,	New York.
BENEDICT, ROBERT D.,	New York.
BRISTOW, BENJAMIN H.,	New York.
BRUNO, RICHARD M.,	New York.
BRUSH, CHARLES H.,	New York.
BULLARD, E. F.,	New York.
BURNETT, HENRY L.,	New York.
BUTLER, WM. ALLEN,	New York.
BUTLER, WM. ALLEN, JR.,	New York.
CARY, MELBERT B.,	New York.
CHAMBERLAIN, D. H.,	New York.
CLARK, JAMES OLIVER,	New York.
CLARK, THOMAS ALLEN,	New York.
COLLIER, M. DWIGHT,	New York.
COX, S. S.,	New York.
CROWELL, CHARLES E.,	New York.
DAVISON, CHARLES A.,	New York.
DICKSON, HERBERT E.,	New York.
DILLON, JOHN F.,	New York.
DORSHEIMER, WILLIAM,	New York.
DUDLEY, JAMES M.,	Johnstown.
EATON, SHERBURNE B.,	New York.
EMOTT, JAMES,	New York.

NEW YORK—Continued.

EVARTS, WILLIAM M.,	New York.
FIELD, DAVID DUDLEY,	New York.
FOX, AUSTEN G.,	New York.
FRENCH, W. B.,	Saratoga Springs.
GLOVER, JOHN H.,	New York.
HALE, MATTHEW,	Albany.
HERMAN, HENRY M.,	New York.
HULL, AMOS G.,	New York.
HUTCHINS, WALDO,	New York.
ISAACS, M. S.,	New York.
JEWETT, HUGH J.,	New York.
KERNAN, FRANCIS,	Utica.
LEEDS, CHARLES C.,	New York.
MACFARLAND, W. W.,	New York.
MATHEWS, ALBERT,	New York.
MOAK, N. C.,	Albany.
MYERS, NATHANIEL,	New York.
NASH, STEPHEN P.,	New York.
NELSON, HOMER A.,	Poughkeepsie.
NICOLL, DELANCEY,	New York.
OLMSTEAD, AARON B.,	Saratoga Springs.
PARKER, ALTON B.,	Kingston.
PARKER, AMASA J.,	Albany.
PARKER, JAMES,	New York.
PATTERSON, T. ELLIOTT,	Ilion.
PEABODY, CHARLES A.,	New York.
PHILIS, WM. WALTER,	New York.
PORTER, JOHN K.,	New York.
PRIME, RALPH E.,	Yonkers.
PRYOR, ROGER A.,	Brooklyn.
ROGERS, SHERMAN S.,	Buffalo.
RUSSELL, W. H. H.,	New York.
SCHOONMAKER, AUGUSTUS, JR.,	Kingston.
SCUDDER, HENRY J.,	New York.
SHACK, FERDINAND,	New York.
SHEPARD, ELLIOTT F.,	New York.
SPRAGUE, E. C.,	Buffalo.
SPEIR, GILBERT M., JR.,	New York.
STERNE, SIMON,	New York.
STICKNEY, ALBERT,	New York.
SULLIVAN, ALGERNON S.,	New York.

NEW YORK—Continued.

SWAYNE, WAGER,	New York.
TAYLOR, JOHN D.,	New York.
TODD, A. J.,	New York.
TUCK, SOMERVILLE P.,	New York.
VANDERHOEL, A. J.	New York.
WARD, JOHN E.,	New York.
WHEELER, EVERETT P.,	New York.
WHITEHOUSE, FREDERICK C.,	New York.
WHITTAKER, EGBERT,	Saugerties.
WILLIS, BENJAMIN A.,	New York.
WILNER, W. N.,	New York.

NORTH CAROLINA.

BOYD, JAMES E.,	Greensboro.
BRIDGERS, JOHN L., JR.,	Tarboro.
KEOGH, THOMAS B.,	Greensboro.
STAPLES, JOHN N.,	Greensboro.

OHIO.

BAKER, WILLIAM,	Toledo.
BALDWIN, CHARLES C.,	Cleveland.
BURKE, STEVENSON,	Cleveland.
CHERRINGTON, THOMAS,	Ironton.
COLSTON, EDWARD,	Cincinnati.
CRAIGHEAD, S.,	Dayton.
DAUGHERTY, M. A.,	Columbus.
DAVIDSON, WILLIAM A.,	Cincinnati.
FERGUSON, E. A.,	Cincinnati.
FORCE, MANNING F.,	Cincinnati.
GRANGER, M. M.,	Zanesville.
GREEN, EDWIN P.	Akron.
GRISWOLD, SENECA O.,	Cleveland.
GROENBECK, WILLIAM S.,	Cincinnati.
GUNCKEL, LEWIS B.,	Dayton.
HALL, JOHN J.,	Akron.
HARRISON, RICHARD A.,	Columbus.
HAYNES, DANIEL A.,	Dayton.
ROADLEY, GEORGE,	Cincinnati.
HODGE, NOAH,	Akron.
HOUK, GEORGE W.,	Dayton.
HUNT, SAMUEL F.,	Cincinnati.

OHIO—Continued.

JOHNSON, EDGAR M.,	.	.	.	Cincinnati.
JOHNSON, WILLIAM W.,	.	.	.	Ironton.
JORDAN, ISAAC M.,	.	.	.	Cincinnati.
KING, RUFUS,	.	.	.	Cincinnati.
LOGAN, THOMAS A.,	.	.	.	Cincinnati.
MASON, JAMES,	.	.	.	Cleveland.
MATTHEWS, STANLEY,	.	.	.	Cincinnati.
MCCLINTOCK, W. T.,	.	.	.	Chillicothe.
MORRIS, S. W.,	.	.	.	Ironton.
MUNGER, WARREN,	.	.	.	Dayton.
NEAL, HENRY S.,	.	.	.	Ironton.
OVIATT, EDWARD,	.	.	.	Akron.
PAGE, HENRY F.,	.	.	.	Circleville.
RANNEY, HENRY C.,	.	.	.	Cleveland.
RANNEY, RUFUS P.,	.	.	.	Cleveland.
SHAW, R. K.,	.	.	.	Marietta.
SHOEMAKER, MURRAY C.,	.	.	.	Cincinnati.
UPSON, WILLIAM H.,	.	.	.	Akron.
YOUNG, EDMOND S.,	.	.	.	Dayton.

OREGON.

DEADY, M. P.,	.	.	.	Portland.
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PENNSYLVANIA.

ARMSTRONG, WM. H.,	.	.	.	Williamsport.
ARNOLD, MICHAEL,	.	.	.	Philadelphia.
ATHERTON, THOMAS H.,	.	.	.	Wilkesbarre.
BAER, GEORGE F.,	.	.	.	Reading.
BALDWIN, HENRY, JR.,	.	.	.	Philadelphia.
BAUSMAN, J. W. B.,	.	.	.	Lancaster.
BIDDLE, GEORGE W.,	.	.	.	Philadelphia.
BISPHAM, GEORGE TUCKER,	.	.	.	Philadelphia.
BRECK, CHARLES DU PONT,	.	.	.	Scranton.
BREDIN, JAMES,	.	.	.	Butler.
BRUNDAGE, A. R.,	.	.	.	Wilkesbarre.
BUDD, HENRY,	.	.	.	Philadelphia.
CRAWFORD, GEORGE L.,	.	.	.	Philadelphia.
DARLING, EDWARD P.,	.	.	.	Wilkesbarre.
DARLING, J. VAUGHAN,	.	.	.	Wilkesbarre.
ELUMAKER, NATHANIEL,	.	.	.	Lancaster.
FRANKLIN, THOMAS E.,	.	.	.	Lancaster.

PENNSYLVANIA—Continued.

GILBERT, LYMAN D.,	.	.	.	Harrisburg.
GROSS, JOSEPH P.,	.	.	.	Philadelphia.
GUTHRIE, GEORGE W.,	.	.	.	Pittsburg.
HANDLEY, JOHN,	.	.	.	Scranton.
HAY, MALCOLM,	.	.	.	Pittsburg.
HEMPHILL, JOSEPH,	.	.	.	West Chester.
HEVERIN, JAMES H.,	.	.	.	Philadelphia.
HUEY, SAMUEL B.,	.	.	.	Philadelphia.
KAERCHER, GEORGE R.,	.	.	.	Philadelphia.
KAUFFMAN, A. J.,	.	.	.	Columbia.
KULP, GEORGE B.,	.	.	.	Wilkesbarre.
LAMBERTON, C. L.,	.	.	.	Wilkesbarre.
LISTER, CHARLES C.,	.	.	.	Philadelphia.
LITTLE, WILLIAM E.,	.	.	.	Tunkhannock.
LIVINGSTON, J. B.,	.	.	.	Lancaster.
MACVEAGH, WAYNE,	.	.	.	Philadelphia.
MCCINTOCK, ANDREW T.,	.	.	.	Wilkesbarre.
MERCER, GEORGE G.,	.	.	.	Philadelphia.
METZGER, THOMAS B.,	.	.	.	Allentown.
MILLER, N. DU BOIS,	.	.	.	Philadelphia.
MITCHELL, JAMES T.,	.	.	.	Philadelphia.
MONAGHAN, ROBERT E.,	.	.	.	West Chester.
NORTH, E. D.,	.	.	.	Lancaster.
NORTH, HUGH M.,	.	.	.	Columbia.
OUTERBRIDGE, ALBERT A.,	.	.	.	Philadelphia.
PALMER, HENRY W.,	.	.	.	Wilkesbarre.
PATTERSON, C. STUART,	.	.	.	Philadelphia.
PENNYPACKER, CHARLES H.,	.	.	.	West Chester.
PENNYPACKER, SAMUEL W.,	.	.	.	Philadelphia.
PERKINS, SAMUEL C.,	.	.	.	Philadelphia.
PETTIT, SILAS W.,	.	.	.	Philadelphia.
PORTER, WILLIAM A.,	.	.	.	Philadelphia.
PRICE, J. SERGEANT,	.	.	.	Philadelphia.
PRICHARD, FRANK P.,	.	.	.	Philadelphia.
RAWLE, FRANCIS,	.	.	.	Philadelphia.
RAWLE, WM. HENRY,	.	.	.	Philadelphia.
REED, HENRY,	.	.	.	Philadelphia.
REYNOLDS, SAMUEL H.,	.	.	.	Lancaster.
ROBB, SAMUEL,	.	.	.	Philadelphia.
ROGERS, GEORGE W.,	.	.	.	Norristown.
SANDERS, DALLAS,	.	.	.	Philadelphia.

PENNSYLVANIA—Continued.

SEIBERT, W. N.,	New Bloomfield.
SHARP, ISAAC S.,	Philadelphia.
SHIRAS, GEORGE, JR.,	Pittsburg.
SHOEMAKER, L. D.,	Wilkesbarre.
SLAYMAKER, AMOS,	Lancaster.
SMITH, WALTER GEORGE,	Philadelphia.
STEWART, JOHN,	Chambersburg.
STEWART, W. F. BAY,	York.
STURGES, E. B.,	Scranton.
TOWNSEND, WASHINGTON,	West Chester.
VAUX, RICHARD,	Philadelphia.
WADDELL, WILLIAM B.,	West Chester.
WAGNER, SAMUEL,	Philadelphia.
WILLARD, EDWARD N.,	Scranton.
WILTRANK, WILLIAM W.,	Philadelphia.
WOLVERTON, SIMON P.,	Sunbury.
WOODWARD, STANLEY,	Wilkesbarre.
ZIEGLER, CHARLES F.,	Philadelphia.

RHODE ISLAND.

BAKER, DARIUS,	Newport.
BLODGETT, WILLIAM W.,	Pawtucket.
BRADLEY, CHARLES,	Providence.
BRADLEY, CHARLES S.,	Providence.
COLT, SAMUEL P.,	Bristol.
COLWELL, FRANCIS,	Providence.
DIXON, NATHAN F.,	Westerly.
GORMAN, CHARLES E.,	Providence.
GREENE, ARNOLD,	Providence.
GREGORY, JOHN P.,	Woonsocket.
HART, CHARLES,	Providence.
LAPHAM, BENJ. N.,	Providence.
PAYNE, ABRAHAM,	Providence.
PECKHAM, FRANCIS B.,	Newport.
RIPLEY, JAMES M.,	Providence.
ROELKER, WILLIAM G.,	Providence.
SHEFFIELD, WILLIAM P.,	Newport.
THURSTON, BENJAMIN F.,	Providence.
THURSTON, JOHN D.,	Providence.
TILLINGHAST, JAMES,	Providence.
VANSLYCKE, NICHOLAS,	Providence.

SOUTH CAROLINA.

BACOT, T. W.,	.	.	.	Charleston.
BARKER, THEODORE G.,	.	.	.	Charleston.
BENET, WILLIAM C.,	.	.	.	Abbeville.
BOYD, ROBERT W.,	.	.	.	Darlington.
DARGAN, E. KEITH,	.	.	.	Darlington C. H.
MCCRADY, EDWARD, JR.,	.	.	.	Charleston.
MCCRATH, A. G.,	.	.	.	Charleston.
SIMONTON, C. H.,	.	.	.	Charleston.
SMYTHE, AUGUSTINE T.,	.	.	.	Charleston.
YOUNG, HENRY E.,	.	.	.	Charleston.

TENNESSEE.

ALLISON, ANDREW,	.	.	.	Nashville.
BATE, H. R.,	.	.	.	Covington.
BROWN, JOHN C.,	.	.	.	Pulaski.
CARROLL, WILLIAM H.,	.	.	.	Memphis.
COOPER, EDMUND,	.	.	.	Shelbyville.
COOPER, WILLIAM F.,	.	.	.	Nashville.
DICKINSON, J. M.,	.	.	.	Nashville.
ELLETT, HENRY T.,	.	.	.	Memphis.
ESTES, BEDFORD M.,	.	.	.	Memphis.
FENTRESS, JAMES,	.	.	.	Bolivar.
FRAYSER, R. DUDLEY,	.	.	.	Memphis.
GAUT, JOHN M.,	.	.	.	Nashville.
McFARLAND, L. B.,	.	.	.	Memphis.
McNEAL, ALBERT T.,	.	.	.	Bolivar.
MOORMAN, H. C.,	.	.	.	Somerville.
PIERCE, JAMES O.,	.	.	.	Memphis.
WALKER, SAMUEL P.,	.	.	.	Memphis.
WOOD, R. H.,	.	.	.	Bolivar.

TEXAS.

BALLENGER, W. P.,	.	.	.	Galveston.
CRAWFORD, W. L.,	.	.	.	Dallas.
FULTON, MARSHALL,	.	.	.	Denton.
GRESHAM, WALTER,	.	.	.	Galveston.
McLEARY, J. H.,	.	.	.	San Antonio.
STOCKDALE, F. S.,	.	.	.	Cuero.
STREET, ROBERT G.,	.	.	.	Galveston.

TEXAS—Continued.

WAELEDER, JACOB,	.	.	.	San Antonio.
WAUL, T. N.,	.	.	.	Galveston.
WEST, C. S.,	.	.	.	Austin.
WILLIE, A. H.,	.	.	.	Galveston.

VERMONT.

DAVIS, BLISS N.,	.	.	.	Danville.
HINCKLEY, LYMAN G.,	.	.	.	Chelsea.
JOHNSON, WILLIAM E.,	.	.	.	Woodstock.
McCULLOUGH, JOHN G.,	.	.	.	N. Bennington.
PAUL, NORMAN,	.	.	.	Woodstock.
PHELPS, EDWARD J.,	.	.	.	Burlington.
POLAND, LUKE P.,	.	.	.	St. Johnsbury.
PORTER, CHARLES W.,	.	.	.	Montpelier.
PROUT, JOHN,	.	.	.	Rutland.
ROBERTS, DANIEL,	.	.	.	Burlington.
SHAW, WILLIAM G.,	.	.	.	Burlington.
SMALLEY, B. B.,	.	.	.	Burlington.
TUPPER, A. P.,	.	.	.	Middleboro.
WALKER, W. H.,	.	.	.	Ludlow.
WING, JOSEPH A.,	.	.	.	Montpelier.

VIRGINIA.

GARNETT, THEODORE S.,	.	.	.	Norfolk.
HAMILTON, ALEXANDER,	.	.	.	Petersburg.
PAGE, LEIGH R.,	.	.	.	Richmond.
ROBERTSON, WILLIAM J.,	.	.	.	Charlottesville.
TUCKER, J. RANDOLPH,	.	.	.	Lexington.

WEST VIRGINIA.

BOGGS, CALER,	.	.	.	Clarksburg.
COLE, W. L.,	.	.	.	Parkersburg.
DAVIS, JOHN J.,	.	.	.	Clarksburg.
HEREFORD, FRANK,	.	.	.	Union.
HUTCHINSON, JOHN A.,	.	.	.	Parkersburg.
KNIGHT, EDWARD B.,	.	.	.	Charleston.
SOMMERVILLE, J. B.,	.	.	.	Wellsburg.

WISCONSIN.

CARY, ALFRED L.,	.	.	.	Milwaukee.
CARY, JOHN W.,	.	.	.	Milwaukee.
GREGORY, J. C.,	.	.	.	Madison.
HOOVER, DAVID G.,	.	.	.	Milwaukee.
HUDD, THOMAS R.,	.	.	.	Green Bay.
JENKINS, JAMES G.,	.	.	.	Milwaukee.
PINNEY, SILAS U.,	.	.	.	Madison.
SCHLEY, BRADLEY G.,	.	.	.	Milwaukee.
VILAN, WILLIAM F.,	.	.	.	Madison.
WEGG, DAVID S.,	.	.	.	Milwaukee.
WINKLER, FREDERICK C.,	.	.	.	Milwaukee.

RECAPITULATION.

States.	No. of Members.	States.	No. of Members.
ALABAMA,	8	MISSOURI,	25
ARKANSAS,	8	NEBRASKA,	2
CONNECTICUT,	21	NEW HAMPSHIRE,	12
DELAWARE,	5	NEW JERSEY,	26
DISTRICT OF COLUMBIA,	28	NEW YORK,	76
FLORIDA,	4	NORTH CAROLINA,	4
GEORGIA,	26	OHIO,	41
ILLINOIS,	24	OREGON,	1
INDIANA,	16	PENNSYLVANIA,	76
IOWA,	2	RHODE ISLAND,	21
KANSAS,	2	SOUTH CAROLINA,	10
KENTUCKY,	15	TENNESSEE,	18
LOUISIANA,	21	TEXAS,	11
MAINE,	11	VERMONT,	15
MARYLAND,	23	VIRGINIA,	5
MASSACHUSETTS,	49	WEST VIRGINIA,	7
MICHIGAN,	22	WISCONSIN,	11
MINNESOTA,	15		—
MISSISSIPPI,	7	TOTAL,	671

APPENDIX.

ADDRESS
OF
CORTLANDT PARKER,
PRESIDENT OF THE ASSOCIATION.

To help to make the nation one is an evident result to be expected from the complete success of this Association, even if it was not avowed by its original framers. The Bar have, all know, most the to do with suggesting, and ordinarily a very large share, directly or indirectly, in the framing, of statute law. Familiar communion among them tends to harmonize opinions and action, and do away with those variances, if not conflict, in the institutions, legal customs, laws, and polity of the different states, which so powerfully interfere with the oneness of the whole people. And, as I suppose, with direct intent to aid in this most desirable result, more than simply to give information which may profit us as practitioners, was the provision of our Constitution which I am now called upon to obey, that your President, at each yearly meeting, shall communicate "the noteworthy changes in statute law, in the various states and by Congress, which have occurred since the last meeting."

Climate, early settlement, and various other circumstances affecting locality, have grouped the states of this Union in such a way as to create shades of difference, not in the degree, but in the character, of their civilization. The

citizen upon the Pacific Coast cannot help but differ somewhat from his brother in the far East. The sons of New England are not the same in habits of thought, in universally held opinion, and general character, with those who belong to the middle states, and they are even farther removed from the dwellers in the far South. The Southern Atlantic states contain a population in many respects different from that of Texas, Arkansas, and even Mississippi, Tennessee, and Kentucky. The Western man who was so called when Ohio was still a Western state, is very different in his individualities from all that I have mentioned; and as you approach the Rocky Mountains and the Pacific, the character of the general Western man changes, the boundaries of each state seeming to have something to do with creating diversity of thought and of mental and moral being among our citizens. There seems to be something in mere boundary everywhere, which makes men on either side differ from each other. This is especially perceptible in the Old World, and very remarkably in Great Britain. How different the Scotchman, Irishman, Welshman, and Englishman! And yet they live largely under the very same laws, and have but the one Parliament. Much more remarkable is the difference, apparently created merely by shire or county lines, in England itself, so that there are found there over twenty dialects—dialects such that it is difficult for the residents in one county to be understood in another, though all professing to speak the English tongue.

We in America have no differences so strongly marked as those we find still existing in the two small islands forming Great Britain; but there are differences, nevertheless, between the inhabitants of different sections. Hence, in performing the task allotted to me, I shall not mention the states alphabetically, nor according to seniority of settle-

ment, but shall note their statutory changes according to the grand geographical divisions existing by common consent. We have Eastern, Middle, Southern, and Western states. I shall remark upon them in this order.

An advancing public sentiment, tiring of the too often recurrence of legislative machinery, has very much lightened the labors of your present President, while the slowness of printers, and other causes, have nevertheless made his task quite sufficiently hard. There are now no less than twenty states whose legislatures hold only biennial sessions. Such is the case in Maine, Vermont, New Hampshire, among the Eastern states; in Delaware and Pennsylvania, among the Middle; in Illinois, Michigan, Wisconsin, Missouri, Nebraska, Colorado, Minnesota, Oregon, Nevada, among the Western; in Tennessee, West Virginia, North Carolina, Alabama, Florida, Louisiana, and Arkansas, among the Southern and Southwestern. From none of these, except Pennsylvania, have I any report at this time to make. The Louisiana Legislature is now, or lately was, in session; too lately, however, to afford any report. In Maine, an adjourned session has been busy passing into laws a revision of their general law made by a designated commissioner.

Biennial sessions of legislatures seem exceedingly popular among the members of this Association, and, it is supposed, the Bar generally. The member of the General Council for one state writes that its Legislature "convenes only in biennial session, and that since the last meeting of the Association, the state has been mercifully spared from any change in the existing law, as well as from the enactment of any new statutes." Others express the same feeling, though with less pious unction. Nor can one help sympathizing with it, and hoping that one day all of the thirty-

eight commonwealths now existing in our wide domain may rest, at least one winter or two, from "noteworthy statutory changes." The idea of yearly legislative session came to us, doubtless, from our Motherland. There it had its origin in just apprehension of executive power. The Parliament was annual, because it was the assembly of the people coming to assert their rights, and unwilling to trust the crown with more than yearly supplies. Through the Parliament, the people spoke to rulers not of their making, whose interests were, or might be, in opposition to their own. In this country, certainly in our state governments, there is not the slightest danger of executive oppression. The executive is as much, or more, the creation of the people than are any other officers. Annual legislatures are both unnecessary and a nuisance. Perhaps it may be said that because plainly unnecessary, they must be a nuisance; for an inferior law, thoroughly understood, is oftener better than a better one which has to be learned, construed, and applied.

Beginning with the most northeastern of the states of the Union, I repeat, that an adjourned, not a regular, session of the Legislature of Maine was held last August for the purpose of acting upon the report of a commissioner for the revision of the entire body of the state statutes. The revised statutes were enacted to "take effect and become law on the first day of January, one thousand eight hundred and eighty-four." This revision, I use the language of a member of the Association in a volunteer report, made at the suggestion of our esteemed and watchful Secretary, for which both have my thanks, was made under a resolution of March 8th, 1881, making it the duty of the commissioner, Hon. Charles B. Goddard, to revise, collate, arrange, and consolidate all the general and public laws now in

force, and such as shall be enacted at the present session of the Legislature, preserving unchanged the order and arrangement of the present revised code, and retaining the phraseology thereof, except so far as it may be necessary to vary it, by incorporating existing laws therewith.

This revision, it will be seen, absolutely negatives the existence thereby of any noteworthy changes in the statute law of Maine, and any mention of it might therefore have rightly been omitted from this address. But in such revisions every lawyer takes the greatest interest. Of codes, the practitioner is apt to be afraid. Even such a revision, which authorizes verbal alteration, however guarded, gives him a slight shiver in view of possibilities. It is a comfort to learn that the work has apparently been performed carefully and skilfully, and it is confidently hoped that it will not be found to give occasion for doubt or uncertainty in its practical application.

In New Hampshire and Vermont, as already stated, there has been no legislative session since 1882.

In Connecticut, I find the following noticeable acts:

The 75th meridian west of Greenwich is made the standard of time for this state.

The late regulation by railroad companies fixing a standard of time through their routes, is one which ought to be followed by legislatures, so as to be made general as nearly as possible throughout the Union.

The location of public reservoirs of water, and cemeteries, within half a mile of each other, is forbidden unless by permission of the superior court of the county. Forsaken cemeteries may by another law be put under the charge of the selectmen of the town.

In the trial of any capital case, or case involving imprisonment for life, the court may, in its discretion, keep the jury together during trial.

This, we believe, is a return, in Connecticut, to the rule of the common law.

The blank indorsement of a promissory note, whether or not negotiable, by a person neither its maker or payee, before or after the indorsement of such note by the payee, shall hereafter import the contract of an ordinary indorsement of negotiable paper, as between such indorser and the payee, or subsequent holders of such paper.

This settles by statute a point long mooted in the courts, and does away with much dangerous parol evidence.

There is a valuable act in relation to the registration of births, marriages, and deaths—a subject much neglected, yet of very great public and private importance, in the detection and prevention of crime, as also civilly.

Another act authorizes official court stenographers and regulates their duties.

It may be observed that while advisable, as far as it goes, this act omits some things in which the system it adopts might be improved. Court stenography should give testimony, if possible, not by question and answer, but in narrative form, except where the report of the question is desired at the moment by either party. As at present generally adopted, stenographic testimony is prolix and fatiguing. And then it should be the rule everywhere, as it is now in some states, that an advocate, when examining a witness, should stand. Elsewise, the system abbreviates the proceedings very little.

One provision of this act, that “during the trial of a case witnesses shall not be interrupted except for the purpose of having notes of their testimony taken by the stenographer,” if enforced, will be apt to burden the case with immaterial or unlawful testimony, for no one’s benefit, that I can see, except the stenographer.

With the notice of one other act we leave the good state

of Connecticut. It relates to the subject of perpetuities, and provides that "no estate in fee simple, fee tail, or any life estate, shall be given by deed or will to any persons, but such as are at the time of the delivery of such deed, or the death of the testator, in being, or to their immediate issue or descendants; and every estate given in fee tail shall be an absolute estate in fee simple to the issue of the first donee in tail."

The protection, by the state, of unprotected children, seems an established doctrine in Connecticut as well as in other states in New England. An act of April, 1884, provides that children under sixteen shall not be retained in almshouses if temporary homes have been obtained for them; and no child under sixteen shall be committed as vicious, truant, or incorrigible, to any jail, almshouse, or workhouse. Such go either to industrial schools or to temporary homes—institutions supported by public tax in each county.

It is impossible not to admire the object of this legislation. Its practical merits require more information than we have been able to attain.

The laws of Connecticut cover 469 printed pages. The session lasted about three months. The result would seem to be hardly an economical achievement, and certainly does not afford an argument against biennial sessions. There is a constitutional amendment before the people, not for biennial sessions, but only for biennial elections.

Rhode Island has had two sessions of her legislature during the present year—one in January, the other in May. We note the following acts:

One, an amendment to the law for the suppression of intemperance, forbidding any action for the value of liquor drunk upon the seller's premises; another forbidding license to any person within four hundred feet of any public school.

These are feeble efforts indeed, but in a right direction. Another act makes it the duty of school committees to make provision for the instruction of the pupils in all public schools "in physiology and hygiene, with special reference to the effect of alcoholic stimulants and narcotics on the human system." The protection of abandoned or ill-treated children, or children trained to evil conduct, is a topic favored in this bill.

The courts of probate are given jurisdiction to inquire in such cases, and to assign the custody of such children under the age of seventeen, to the Rhode Island Society for the Prevention of Cruelty to Children, who are authorized to assign them to be kept and cared for by certain benevolent societies named in the act. Interest in such friendless creatures would seem to be an almost crowning advance of civilization. That the state is in earnest on this subject appears from a later act, which enacts that the State Board of Education shall constitute the Board of Control of a State Home and School for Dependent and Neglected Children, which the statute proceeds to establish and regulate. "It is declared to be the object of this act" we quote its words, "to provide for neglected and dependent children, not recognized as vicious or criminal, such influences as will lead toward an honest, intelligent, and self-supporting manhood and womanhood, the State, so far as possible, holding to them the parental relation," and \$15,000 was appropriated to buy a suitable location for the State Home and School.

"An ounce of prevention is worth a pound of cure," therefore is "education the cheap defense of nations"—and therefore is this scheme most praiseworthy. Who can tell how many neglected and dependent children—children entirely abandoned or treated with gross and habitual cruelty by parents or other custodians, or habitually suffering for food or clothing through their neglect, or com-

pelled by wicked parents or custodians to lie, steal, or otherwise impose on mankind—how many such children, in after life, throng our gaols, or dangle on the gallows?

Another good act associates medical examiners with coroners, and regulates the conduct of both. Another enables town councils to prohibit burials in thickly populated districts.

I think I have mentioned every act of importance passed at these two sessions. Is not such legislation, good as it may be, very costly? I mean not merely pecuniarily, but in view of the insecurity and excitement with which legislative sessions are accompanied.

A careful search through the three hundred pages of the laws and resolves passed by the legislature of Massachusetts during its session of 1884, discovers scarcely any statutes of a public nature worthy being stated to this Association. There is an act which seeks to introduce Civil Service Reform in relation to the appointment of state and municipal officers. There are likewise two acts in relation to children—that is, minors under eighteen—one, forbidding the exaction from them of more than sixty hours of labor per week in any mercantile establishment; another punishing fathers for unreasonable neglect in providing for them; and attention may well be given to the act, almost the first of the session, making appropriations for sundry charitable expenses, showing that the state contributes nearly half a million per annum for such purposes as the demands of a State Board of Health, Lunacy, and Charity, including the needs of in-door poor, and out-door poor, for state paupers in the lunatic hospitals and asylums of the commonwealth; for state paupers in the state almshouse, indigent and neglected children, infant asylums for the support of infants having no known settlement in the commonwealth, outside

foundlings, Indian state paupers, and special pupils in the Massachusetts School for the Feeble, and for the inspection of milk, food, and drugs.

I accept this absence of all noteworthy changes in her Statute Law as evidence of its general perfection in that ancient and honorable commonwealth of Massachusetts; a commonwealth in which the civilization of New England is intensified: a civilization as nearly approaching theoretical perfection, let me add, as exists upon this globe. It may be tinctured, as some think, with self-complacency, but it is self-complacency not without extenuation, if not justification.

Stability, satisfaction with the law as it stands, and a desire to improve their future by making the state the guardian of unprotected youth, are the apparent characteristics of the legislation of New England.

We turn to the next southern division of the Union, the Middle States.

The session of the New York Legislature for 1884, began on the first day of January, and only closed on the sixteenth of May. Its Governor has been detained at Albany to a late date considering various acts which his signature might make laws. New York, the state combining, we suppose, a greater variety of interests than any other, and whose laws have been most generally copied, I think, by sister states, has passed many public acts, most of them purely of local character, but some, interesting generally.

One of the earliest acts of the session created a commission to examine into and report upon the practical operation of the contract system for the employment of convicts in state prisons. This commission was to continue till March 1, 1884. A few days after, whether in consequence of a report I cannot say, another act forbade any new contracts to be made. She has established as standard time the 75th

meridian of longitude west from Greenwich, by which all courts and public offices, and all legal and official proceedings, shall be hereafter regulated.

An act in relation to trusts, provides, that wherever a sale conveyance or other act of trustees is in contravention of a trust expressed in the instrument creating the estate, it shall be void; but the Supreme Court are given authority to confer power to mortgage, when necessary to preserve or improve the estate.

An amendment of the penal code declares that a child of seven and under twelve years is presumed incapable of crime, but the presumption may be removed by proof. It also severally defines and punishes abduction—makes keepers of concert saloons and the like guilty of misdemeanor if they admit in, or permit in them “any child actually or apparently under sixteen, unless accompanied by its parent or guardian”—declares children under sixteen who beg, or gather or pick rags, or collect cigar stumps, bones, or refuse from markets, or who have no home, or are in a state of want or suffering, or who are destitute of the means of support being an orphan, or living, or having lived with a parent or guardian who has been sentenced for crime—or who frequent, or are in the company of reputed thieves or prostitutes, or in houses of such ill character, or where liquor, wine, or ale is sold—or are found playing any game of chance or skill in or near such places, to be vagrants, and authorizes their commitment to charitable or reformatory institutions. It likewise makes criminal the employment of children actually or apparently under sixteen, or the putting out to such employment, as rope or wire walker, gymnast, or acrobat, or in begging, peddling, or singing, or playing instruments, or in any indecent or immoral exhibition or practice, or any dangerous to a child's life, limb, health, or morals. It also prohibits as criminal, the making, selling,

or giving away, the weapons known as sling-shot, billy, sand-club, or metal knuckles, or, without consent of a magistrate, giving or selling any pistol or other firearm, to any person under eighteen. It also makes attempting, or having with intent, to use the enumerated weapons, or a dagger, dirk, or dangerous knife, a crime.

An amendment of the code of criminal proceedings allows the compromise of any misdemeanor for which the persons injured have a civil action, except it was committed by or upon an officer of justice while in execution of his office, or riotously, or with intent to commit a felony. An act, let me say, which seems very dangerous.

The practice in reviewing criminal matters, has been changed by this legislature. Writs of error and *certiorari* in criminal actions and proceedings, and special proceedings of a criminal nature, as they have heretofore existed, are abolished: and hereafter, the only mode of reviewing a judgment or order in such cases, is by appeal.

The scope of forgery is greatly enlarged by another amendment to the Penal Code. It declares that a person, who, either being an employé, falsifies, or unlawfully and corruptly alters, erases, obliterates, or destroys any accounts, book of accounts, record, or other writing belonging to, or to the business of, his employer, whether corporate or individual; or who, with intent to defraud, shall falsely make, or aid in the making or counterfeiting any letter, telegram, report, or other written communication, paper, or instrument by which any other person shall be injured in his good name, standing, position, or general reputation, or who shall alter or connive at altering any such false writing or telegram, by the altering of which the sentiments, opinions, conduct, character, prospects, interests, or rights of another person shall be misrepresented or otherwise injuriously affected, is guilty of forgery in the third degree.

Another amendment makes trading in obscene literature or pictures, or making or exhibiting them, a misdemeanor.

An act in relation to the rights and liabilities of married women provides, that a married woman may contract to the same extent, with like effect, and in the same form as if unmarried, and she and her separate estate shall be liable thereon, whether such contract relates to her separate business or estate or otherwise—and in no case shall a charge upon her separate estate be necessary—but the act shall not affect or apply to any contract that shall be made between husband and wife.

This law would seem to demolish the last vestige of the old common law respecting husband and wife—baron and feme, feme sole and feme covert pass off into the land of quaint and obsolete tradition. Whether the institution called “home” is not to go too, there being no longer any “baron,” and the “feme” being so much of a business partner, is perhaps one of the questions of the future.

But “verily we are the people, and wisdom will die with us!”

There is an admirable act (chap. 439) “for the better protection of life and property upon the railroads of this state,” entitled an “act to promote the safer and better management of steam railroads,” requiring safety switches, warning signals at every bridge crossing tracks, so as to protect employes; flagmen or gates wherever directed by the Supreme or County Court; automatic couplers; the stoppage of locomotives, whose tracks cross each other, before proceeding; automatic air brakes or other form of safety power brakes; and that all passenger cars shall carry an axe, sledge-hammer, crow-bar, and hand-saw. And there is an additional section requiring baggage-masters or other persons whose duty it is to handle and remove baggage, to do so carefully, providing, that if they wilfully or recklessly injure

or destroy any trunk, valise, box, bag, package, or parcel, while loading, unloading, transporting, delivering, or storing the same, or if any railroad company shall knowingly keep in its employment any such wilful or reckless fellow, there shall be a penalty of \$50, one-half to be paid to the complainant. Blessings on the projector of this law. There is hope for the traveler yet!

One more act deserves especial notice. It provides that all telegraph, telephonic, and electric light wires and cables, used in any incorporated city in the state having a population of 500,000 or over, shall hereafter be placed under the surface of the streets, lanes, and avenues of said city; that every corporation or person owning or controlling such wires and cables, including what is known as telegraph poles, and other appurtenances thereto, shall, before November 1, 1885, have the same removed from the surface of such city; and if they do not, the local governments are bidden to do it for them. It further forbids any city to grant any exclusive privilege or franchise under the act.

Verily this is a step in advance! The forest of ugly poles, and the network of innumerable wires, which meet us at every turn, are to disappear! Well done! New York! Now go a little further. Make the law applicable everywhere, and not only to cities having five hundred thousand people. Let it be the law of the whole state—let it be followed throughout the Union—and by-and-by let us hope to see another law also everywhere operative, which shall forbid any railroad crossing a street, or ordinary travel-road, upon the level, and so rid us of that great nuisance under which the whole land groans. The broken limbs and the lives annually sacrificed through this cause, are dreadfully numerous. Why has not the time come for this blood to cry from the ground, and persuade us to adopt what all Europe has from the beginning established as the rule!

The New Jersey Legislature began its session January 8th, and it ended, to the gratification of all concerned, about April 15th. It is hard to say whether any of its acts are "noteworthy," beyond the limits of the state itself. I mention such as seem most so. An act was passed providing that the receipt in writing for money paid to any executor, administrator with the will annexed, or trustee in the exercise of a trust or power, shall be a full discharge, and that the payer shall not need to see to the application of the payments made.

Another, abolished and made penal the contracting for the labor of inmates of the state prison.

The effect of this "change" will not soon be seen, as existing contracts have yet some time to run. But whether it be financially, or otherwise expedient, is a matter of some doubt. Prison discipline requires labor. Sentences impose hard labor, which is the legal synonym for incarceration in the state prison. How well the state itself can manage as a manufacturing and mercantile corporation, remains to be seen.

A later act directs how the inmates of state prisons are to be employed. They are to be "employed, as far as practicable, in the judgment of managers, at work upon goods used in such institutions as are under state control, and all prisoners or persons not employed for said purpose shall be employed on what is commonly known as the 'piece-price plan,' as the managing authorities of such prison may be able to arrange for with parties desiring such labor, or they shall be employed under what is known as the 'public account system.'" How "arranging with parties desiring such labor" is to be distinguished from contracting for labor, will be for some learned judge some day to find out.

Another act regulates lettings in cases where no definite term is fixed, and the rent is payable monthly. I hardly

think it can be thought to have been skilfully drawn. It provides that "in any letting where no term is agreed upon, and the rent is payable monthly, so long as the tenant pays the rent as agreed, it shall be unlawful for the landlord to dispossess the tenant, before the first day of April succeeding the commencement of such letting, without giving the tenant three months notice in writing to quit; provided, however, that in case such tenant shall be so disorderly as to destroy the peace and quiet of the other tenants living in said house, or the neighborhood, or shall wilfully destroy, damage, or injure the premises, or shall constantly violate the said landlord's rules and regulations governing said premises, in any such case the said landlord may pursue any of the remedies now provided by law for the removal or punishment of said tenant, this law to the contrary notwithstanding."

This statute has not yet come before the courts. When it does, the meaning of the proviso may be a question. When is a tenant so disorderly as to destroy the peace and quiet of his co-tenants or the neighborhood? And what is the neighborhood? And when does a tenant "constantly violate the landlord's rules and regulations"? But we suppose the answer to all this will be the same so delightfully frequent, "All that is for the jury!"

The rights of woman were enlarged by another of New Jersey's laws at the last session. She was made by it eligible to be a Commissioner of Deeds for New Jersey, resident in another state. And it has been stated that at least one woman has since been appointed.

The rock wears away under successive waves. But why cannot woman, and the self-asserting friends of her rights, see, that to her, nature has given an influence, through which she wields a power far greater than any which can grow out of legal authority—an influence which diminishes just in proportion as the sex acquires legal power. And, as

to this particular case, what was the necessity for extending to her the sublime duty of taking the acknowledgement of a deed? Perhaps a more praiseworthy effort to ameliorate the condition of the sex is another enactment, to wit: that female employes in any manufacturing, mechanical, or mercantile establishment in the state, shall be provided with suitable seats, and permitted to use them when possible. This, under a penalty of twenty-five dollars for any violation of the rule.

There was rather a large proportion of unmarried gentlemen of the Bar, I believe, in New Jersey's last legislature. But this is not a bad law. I wish, though, that somehow, it might be unnecessary. It has already seemed to me deplorable that women should be employed in factories. Yet it is, perhaps, among the necessities of advanced civilization.

An act supplementary to that respecting idiots and lunatics seems to be taken from the Lunacy Regulation Act, 16 & 17 Victoria, c. 70, s. 123, (which itself, I suppose, was mainly declaratory) making continuing lunacy a ground for a dissolution of partnership by decree in chancery.

The chief achievement of the last legislature of New Jersey was the change of the law regulating the taxation of corporations, and especially of railroad corporations.

It is not, perhaps, generally known, that among the earliest railroads in the country, were some of those in New Jersey. They were experiments, and their promoters entered upon their construction with fear and trembling. The citizens of the state were proportionately anxious for their success, and were yet desirous that they should properly contribute to the state support. The first of these corporations was that for building the Camden and Amboy Railroad, and for the reasons given, its charter contained a provision, that it should pay to the state an annual tax equal to ten cents upon each passenger, and fifteen cents upon each ton of

freight which it carried, and that no other tax or impost should be levied upon the company.

And the charter further provided that if the state should authorize any competing road between the two cities of New York and Philadelphia, beginning and terminating within three miles of the termini authorized for this railroad, then this tax upon its business should cease. This ten cent impost was afterward restricted to through passengers, instead of being payable for every one carried upon the road anywhere. The company purchased this change by giving to the state one thousand shares of the capital stock, equal, at par, to fifty thousand dollars. Subsequently, but early in the year 1832, another thousand shares of stock were given to the state, who, in consideration thereof, covenanted that it should not be lawful, during the charter, to construct any railroad for transportation between New York and Philadelphia, without the consent of this company. This act, however, reserved a right to charter a road between the Hudson and the Raritan, and this the New Jersey Railroad and Canal Company was chartered to build, paying one-half of one per cent. on its capital stock, originally \$750,000, in lieu of all taxes and assessments. But it was provided that if any railroad was thereafter built intersecting this, so as to make a continuous line to Philadelphia, the company carrying through passengers by it, should pay eight cents each passenger, and twelve cents each ton of freight. Such a road was afterwards built under the auspices of the Camden and Amboy. So one route paid ten cents each through passenger and fifteen cents each ton of freight, the other eight cents and twelve cents respectively. By a subsequent act these transit duties were equalized.

In 1869, these transit duties, as they were called, were abolished, and the companies thereafter paid one-half of one per cent. upon the cost of all their works and property not

otherwise taxed. This provision netted to the state a very considerable income. But the municipalities through which the railroads passed complained bitterly, because nothing was paid to them, apparently forgetful or careless of the fact that the payment, by increasing the revenue of the state, diminished to them as well as to all the state, the quota due for state support. I stop here to say, that the transit duties of ten cents a passenger, and twelve or fifteen cents a ton for freight, cover all that was levied. It was a simple income tax—the fairest sort of tax ever imposed. It has been popularly believed that the state derived one dollar from each passenger, and, I believe, a proportional amount upon freight; but this is incorrect. No more was ever levied than is stated. This immunity from other taxation was especially distasteful to the municipalities whose territory comprised the termini of these roads. It was not confined to these corporations. Other great companies had their termini opposite New York. Some of them paid the same or a similar tax to the state in lieu of all other taxation. Such corporations as had no such immunity, soon complained that they suffered for the sin or the good fortune of their fellows through unequal or undue taxation. The subject took strong hold of the popular mind; and in 1873, a law was passed which it was intended should be embraced by all railroad companies, by which it was provided generally, that they should pay one-half of one per cent., or any other tax already imposed on them by law, upon the cost of the roads, their equipments, and appendages, as a state tax; and one per cent. upon the value of all other property they owned, excluding their right of way, and not to exceed ten acres for terminal facilities, for the benefit of the township; this value not to be found by township officers, whose interest leaned to high valuations, and which were beyond that adopted for property generally, but by a commissioner

to be appointed by, and responsible to, the state. This act was changed three years afterwards (in 1876,) by laying the tax, not upon the cost, but upon the true value of the roads, their equipments, and appendages, meaning by that word, all real estate used in anywise as part of the plant; this true value to be found by commissioners, subject to an appeal to a judge of the Supreme Court. Otherwise the act of 1873 remained.

Gradually the operation of this law renewed public excitement. The taxes upon property in these municipalities held by citizens and the rate of taxation increased. One party laid this to extravagance, waste, corruption, and to the accumulation of tax arrears. The other attributed it to the abstraction of so much valuable property from municipal valuation and taxation. The political parties both made the increase of taxation upon corporations a part of their platforms; so when the legislature met, every member was more or less desirous to comply with this popular outcry.

Different plans were suggested. One proposed that the property of the railroad company, plant and all, should be assessed where it had its *situs*, by the municipal assessors, according to the valuations they should make, and the rate the municipal legislatures should establish. The companies and their advocates, on the other hand, dwelt upon the impossibility, the impolicy, and the injustice of such a course. They urged that land taken for a railroad lost its value for agriculture or for building improvement, and that no township assessor could possibly make a proper valuation of the embankment or excavation as it might be, with its rails and ties, whose real worth consisted in its being part of a given whole adapted to one only purpose. They urged the temptation to partiality, held out to assessors, and the impossibility of appeal, or of getting justice if appeal was taken. The whole subject of railroad taxation as practiced through-

out the country was carefully discussed before legislative committees, and afterwards debated upon the floor. The result was an amendatory act, the language of which is scarcely clear enough to forbid doubt as to judicial construction, but which in principle adheres to the system of taxation heretofore followed. A board of state assessors values every railroad plant. A tax of half of one per cent. is paid upon that to and for the state. Upon so much of the plant as lies within any municipality, exclusive of the railroad proper, one hundred feet wide, and of depot buildings used for passengers connected therewith, and upon any real estate not forming part of such plant, a tax is imposed according to the rate fixed by such municipality, but such tax shall not exceed one per cent. upon the valuation made of such property constituting the plant. Outside property is taxed according to local rates and valuation.

The Board of Assessors consists of four members—not more than two to be members of the same political party—(a description, by the way, which is hardly within the limit of what is legally determinable—for in what consists membership of a political party? And then, suppose there are many political parties; a contingency not very impossible). The Governor appoints with the consent of the Senate. None of them can be "interested in any railroad and canal company," we quote the rather loose words of the act,—during his term of office. Three must unite in any valuation or other official action. How this scheme will work, is a question for the future. I have thought it worth description because of the general interest in railroad taxation. It is of the last importance that there should be an identity in the mode of such taxation everywhere. For the plant of a railroad is a unit, and yet some if not most of our great railroads pass through several states.

Valuation of the plant necessarily includes a valuation of

the franchise, and how are these states to apportion their rights in that? Again the equipment of a railroad is always very costly and valuable. Shall all of it pay a tax in every state through which the road runs? And what valuation is to be put upon right of way, the occupation for which ruins every strip of land taken, for all ordinary purposes? Are the municipalities to assess, and worse, how are they to collect their taxes? Shall they break up a railroad line by sale of the iron, the ties, or the right of way, in a particular taxing district? Again, what of the bonds,—mortgage, and income,—due by almost every railroad company? Shall the plant be taxed at its valuation, without regard to its incumbrances? And if not, or whether or not, how are municipalities to gauge their special rights in a gross sum realized by taxation?

The new Board of Assessors established by New Jersey are to apportion to each municipality through which its railroads run, how much each is to receive. I do not think their task is an enviably easy one.

I quote from an interesting and valuable report made to the Massachusetts Legislature in 1880 some observations upon this difficult and important subject. "On examining the state systems in present use in this country, it will at once be observed that they are much more varied than would naturally be supposed, or perhaps than would have been thought possible. Generally, it may be said, there is no one principle running through the various systems, and further, that there is no method of taxation possible to be devised which is not at this time applied to railroad property in some part of this country. So far as those now well recognized principles, which should be at the basis of all systems of taxation, are concerned, they would as a rule seem to have been utterly ignored. In two adjoining states, for instance, with roads belonging to one company, operative in both,

will be found on one side of the line a system, simple, direct, equitable, imposing a moderate and fixed burden from which there is no escape; while on the other side of the line will be met a system which can be said to be based on nothing more reliable than arbitrary guess-work. In certain states, the railroads are apparently looked upon as a species of windfall, from which everything which can be exacted in the way of taxation is so much pure gain. In other states they escape with very slight and sadly disproportionate burdens. The franchise tax, the gross and net earnings tax, the personal property tax, the realty tax, are all met with indiscriminately. Applied sometimes by local boards, sometimes by boards of state equalization, but almost invariably in utter disregard of any principle, a more striking and in some respects discouraging example of general confusion as regards an important matter of fiscal legislation, could hardly be imagined." I cannot help expressing my individual preference for the method of railroad taxation recommended by this Massachusetts committee: a percentage upon gross receipts, the state to take to herself so much of the amount realized as is deemed right, and to divide the remainder among the municipalities upon the line, according to the number of miles within their boundaries; real estate not part of the plant to be assessed locally; real estate forming part of the plant, not.

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A little act, apparently premonitory, perhaps experimental, provides that "whenever any wire or cable used for any telegraph, telephone, electric light or other wire or cable for electric purposes, is or shall be attached to, or does or shall extend upon or over any building or land, no lapse of time whatsoever shall raise a presumption or justify a proscription of any perpetual right to such attachment or extension."

New Jersey has passed another act, richly worth notice, but of no great length. Improvident or unpaid workmen have been tempted to sell their claims for wages, sometimes even ahead of their being earned; and sharpers have been greedy to buy them, almost always at oppressive discount. This practice has become very rife, especially among employés of railroad companies, which are sometimes unhappily quite irregular in their payments. To protect this highly deserving class, the act alluded to has become a law. It declares that it shall not be lawful for any person to purchase or have assigned to him any wages due or to become due for any price less than their amount, except upon discount at legal interest; and it punishes the breach of the law, on conviction, with a severe fine. This act tends to save the workman from himself.

An act authorizing one member of a dissolved firm to make a separate compromise with its creditors, without the release to him discharging his co-partner, seems to be a noteworthy change.

There is a statute among the new session laws of this state entitled, "An act to regulate the holding of and to prevent fraud in the primary elections of the several political parties in cities of the state of New Jersey." It provides that officers of primary elections shall take an oath for faithful performance of their duties, in accordance with the laws of the state and of the United States, and in accordance with the rules and regulations of his party; and it makes disobedience to these rules, the rejection, knowingly, of the vote of any person entitled to vote under these rules, or the reception, knowingly, of the vote of any person not qualified, and any wilful fraud in the election, or misdemeanor, punishable by fine and imprisonment.

With great deference to the honorable the Legislature of my native state, I must think that they have opened a new

field for legislation,* and passed a law which the courts will hardly sustain. To send a man to prison for disobeying rules which certainly have not the force of law, and cannot have it, will be a new thing indeed. There are some entities which the law has never recognized, and which it seems impossible that they ever should recognize, and one, if not the chief of them, is party. If this act stands, why not make it a legal crime to break the rules of a religious denomination, or of the Masonic Order, or the Order of Odd Fellows, or the by-laws of any corporation, or the like? In fact, such an act would be more reasonable, since if there be anything which the law, as such, ignores, or concerning which it at least maintains a state of unconsciousness, it is the political parties which control the Republic.

New York, as we have seen, interdicts telegraph and other poles. New Jersey, by a special act subsequent to that already noticed, permits the use of highways for them, but requires that it be with the consent of owners of the soil. In the same act, underground wires are permitted, without requiring that consent. The owners of property contiguous, by New Jersey law, own to the middle of all highways. It would seem as if law makers had been slightly oblivious of individual right.

An act of New Jersey authorizes City Councils by ordinance to establish the depth and mode of construction of foundation walls, in order to the protection of adjacent owners. Again, it would seem risking the invading private right, for must not every case differ where adjacency needs protection?

The statute of the United States for the enforcement of the civil rights of people of color, and which, in certain respects, was declared void by the Supreme Court because beyond the

* I learn that Pennsylvania has a similar law some two years old. I have not heard that it has been enforced.

provision of the Federal Constitution, has been substantially reproduced in New Jersey, which has enacted, "that all persons within her jurisdiction shall be entitled to the full and equal enjoyment of the accommodations, advantages, facilities, and privileges of inns, public conveyances on land or water, theatres, and other places of public amusement; subject only to the conditions and limitations established by law, and applicable alike to citizens of every race and color, regardless of any previous condition of servitude." The example thus set should be everywhere followed—such civil rights depend not upon federal but state authority. It may be that this law is simply declaratory; but the declaration is good policy.

I do not know that it is to the credit of New Jersey. I do not myself think that it is, but it is the fact, that more "noteworthy" new laws have come from her last legislature than from any one of her sister states. It does not in my judgment, afford an argument, either, against biennial legislative sessions.

But is not the groan of Solomon, "of the making of books there is no end," a mistranslation? Did he not really say "of the making of laws there is no end?" There is one recommendation of the legislation of New Jersey; it covers little printed space, at least compared with former experience. State of railroads and corporations as it is, its session laws of 1873 made a book of 1600 pages; those of 1874 another of 1300; of 1875 over 1000; then came into operation a constitutional amendment providing that "the legislature shall pass no special act conferring corporate powers, but shall pass general laws under which corporations may be organized, and corporate powers of every nature obtained," since which their volumes rarely exceed 300 pages. But a more valuable effect is that "lobbyism" is greatly diminished, and so is corruption; diminished, I say,

for unfortunately, it is not dead. Nor as long as human nature remains what it is, can we, I suppose, look for its entire extirpation.

The first act I have marked as "noteworthy" in the recent statutes of Pennsylvania, is identical in language with that noticed from New Jersey, forbidding lapse of time to raise any presumption of right in those who stretch telegraph or electric wires over other people's land; indication this, that this class of trespass exists everywhere. Act No. 16 has at least a worthy object. It is entitled "an act to authorize the creation, and to provide for the regulation of voluntary tribunals to adjust disputes between employers and employed, in the iron, steel, glass, textile fabrics, and coal trades." Its preamble tells the story. It reads thus:—"Whereas, differences arise between persons engaged in the iron, steel, glass, textile fabrics, and coal trades in this state, and strikes and lock-outs result therefrom, which paralyze these important industries, bring great loss upon both employer and employed, and seem to find their only solution in force, which does not accord with the teachings of humanity and the true policy of our laws, and whereas voluntary tribunals, mutually chosen, with equality of representation and of rights, and a frank discussion therein, by the persons interested, of the business questions involved, are the plain paths to mutual concession and cessation of strife, and the choice of an umpire by the parties themselves, to whose arbitrament the matters in dispute are to be submitted for final decision, if they shall fail to agree, is in accord with the practice and policy of this commonwealth." The statute then goes on to provide with the greatest care for the constitution of such tribunals, and for their procedure. The Bar is excluded, the umpire is sovereign, and the court enforces his judgment.

No one can help wishing this scheme every success. It may tend to mitigate, if it cannot be expected to destroy, that strife between labor and capital which is looming up as the great cloud upon our future. / Our country presents to view, on the one side, the most colossal and speedily acquired wealth; on the other, but too often, the most hideous and sickening poverty. Capital and labor should always be close friends. So they will be, in proportion as they each eschew selfishness. But, alas! capital forgets that it is a trustee; and labor resorts to combination, and through it, resolves to have what it thinks its own. What histories are written in the words "strikes and lock-outs"? What horrors may not be prepared for a future not so very far away? The Mollie Maguires of Pennsylvania show to what combination may come. The excesses there are checked, and as long as trade is reasonably flourishing, they seem no longer possible. But as population, and especially foreign population, increases, and the masses of ignorance in our great cities, and in mining and manufacturing districts, accumulate, what is to become of capital, of property in every and any form, when some panic prostrates trade, and starvation fires the passions of the legions of labor, educated by secret societies in communism, and extenuated, if no more, by the presence everywhere of voluptuous luxury? Oh, for the statesman to appear who shall solve the enigma presented by the almost natural and unavoidable hostility between these two great forces, capital and labor!

An act to enforce the provisions of the 17th Article of the Constitution, relative to railroads and canals, interdicts all undue or unreasonable discrimination in charges or facilities for freight, directs that charges be uniform, and enacts that if directors or employers shall be directly or indirectly interested in railroad business, they shall be guilty of a misdemeanor, and punished by fine and imprisonment.

Another act escheats to the commonwealth the telegraph lines and property of telegraph corporations, associations, and companies, which violate the provisions of the Constitution, prohibiting the consolidation or the holding of a controlling interest in the stock or bonds of a competing line of telegraph, or the acquisition by purchase or otherwise of any other competing line of telegraph.

These acts, and the Constitution they are intended to enforce, tell the story of the sins of corporations in the state of William Penn, and show that a struggle against the oppression of corporate power is going on. An act of a different cast than the last, which directs an escheat, enables *filios nullius*, born of the same mother, who leave neither mother nor issue capable of inheriting, surviving, to take and inherit from each other as next of kin and heirs in fee simple, in the same manner as children born in lawful wedlock.

Another act forbidding the consolidation of competing corporations, refers to pipe lines, escheating them also, in case of consolidation, to the state.

Another act (and most righteously) prohibits political parties, committees, or members thereof, from assessing upon or demanding from public officials contributions for political purposes.

Another takes pauper children away from poor-houses, and places them in families or in public homes.

Another requires all convict-made goods to be branded as "convict-made." This, I suppose, as a means of lessening their competition with ordinary manufactures.

Another enacts that in case of entailment, express or implied, any claimant under the tenant in tail, by conveyance in fee or by judicial sale, may bar the entailment as fully as the tenant in tail could.

These are all the public acts of note in a book of 376 pages.

Delaware, the smallest and most southern of the middle states, has biennial sessions of her legislature, and this year was without any.

We pause for a moment to observe anew, how the laws passed within territorial boundaries photograph the state of society existing there. New York provides mostly for her great cities, and her enactments tell of the villainies practiced there upon childhood, and of the myriads of children educated for the practice of crime; of the brutality and violence with dangerous weapons prevalent; and alas! of a fatal readiness to regard most crimes as offences so largely against the individual, that compromises of the offence are to be almost assisted. They tell of embezzlements through falsification of entries, and destruction of books, and of shrewd writings and telegrams in other's names, leading to loss of reputation, position, and standing. They give us a picture of Wall street and its neighborhood, with its forests of telegraphic poles, and its spider webs of telegraphic wires. They show the dangers to employés and to travelers, of railroad travel. They recognize the gravity of the complaint prevalent as to convict labor, while yet the state is not ready with the remedy. New Jersey, home of railroads beyond almost any other, proportionably to territorial extent, a state too in manufactures equally eminent, gives up the time of her legislature mainly to seeking to make these railroads pay fairly for the privileges they enjoy, and to comforting and protecting operatives. Pennsylvania, specially the state of miners and manufacture, provides diligently against strikes, and being the home of many powerful corporations, contends by enactments against their abuse of power, and its extension by the fearful plan of consolidation.

It seems deducible from the tenor of legislation that in these middle states, the struggle between capital and labor

is more violent than in the eastern. It seems as if society generally was more turbulent, and its working classes more dangerous.

Pass we now to the group of states geographically known as southern—North Carolina, Florida, Alabama, Louisiana, Arkansas, Missouri, Tennessee, and West Virginia, make no addition this year to statutory law. We are confined to the notice of Maryland, Virginia, South Carolina, Georgia, Texas, Mississippi, and Kentucky.

Maryland, in a volume of over 800 pages, shows scarcely any public laws. One of them protects mortgages of chattels, by making their fraudulent removal, secretion, or destruction, criminal.

Another is an endeavor to prevent miscegenation, by making marriage between a white person and one of negro descent to the third generation, not only void, but an infamous crime, punishable by the penitentiary for ten years.

Another makes it criminal for factory owners to overcrowd their works, or allow them to be troubled with noxious effluvia. Two others legalize or tend to legalize trade unions, and combinations in contemplation or furtherance of a trade dispute.

A statute concerning wills, re-enacts old provisions, with changes not specially noteworthy out of the state itself. There is a clause worth knowing, whether it be new or not, by which wills made out of the state by a citizen thereof, are to be admitted to probate *in* the state, if executed according to the forms of the place where made, or where the maker resides.

Virginia, mother of Presidents, and so long chief in the Confederacy, supplies this year a volume of session laws of

no less than 821 pages, containing scarce anything but acts of a private nature. She is largely a farming state, and so she has enacted that between the 15th of June and the 15th of July, anyone personally engaged in the active duty of farming shall be exempt from jury service. She owes bonds with coupons—she, or some of her municipalities, or both—and so she provides that "No company or corporation, either foreign or domestic, shall hereafter be chartered or incorporated under the laws of this commonwealth, either by the general assembly or by the courts, neither shall there be passed or granted any renewal, amendment, or extension of any charter or act of incorporation heretofore granted, except upon condition that said company or corporation shall pay all taxes and demands due the state, or that may hereafter be assessed against it, in lawful money of the United States, and not in coupons." She is not yet free from some habits of olden times, such, for instance, as that of duelling; and so in one act, two-thirds of both houses concurring, the disabilities of forty-four gentlemen named, incurred under clause three of section one of article three of the constitution of Virginia, with reference to duelling, were thereby removed. She has availed to the necessity of public education, and to her great credit, be it said, to the necessity and propriety of the education of the colored race, and so she has enacted that the president and faculty of the Virginia Normal and Collegiate Institute, shall be required each and every year to conduct a normal course of instruction for the benefit of the colored teachers in the public schools of the state, or of those who expect to make teaching a profession. These are all the public acts, save some having relation to court practice and like technical matters, which this book contains. There is a set of joint resolutions which, perhaps, are "noteworthy," but historically and financially, rather than legally. They assert the "Riddleberger Bill" as a set-

tlement of their state debt, which is a "finality," and that any expectation that any settlement of the debt of the state upon any other basis will ever be made or tolerated by the people of Virginia is absolutely illusory and hopeless; and they call upon all creditors of the state to come forward with promptness, and fund their bonds and claims accordingly.

South Carolina has passed two hundred and fifty acts and thirty-two joint resolutions, but few justify notice. One statute enacts that if any child die in the lifetime of a father or mother leaving issue, any legacy of personalty or devise of realty given in their wills shall go to such issue, unless the deceased child was equally portioned with the other children by the father or mother when living. Several acts allow the question of "license or no license" to be settled by vote of municipalities. Several more expressly interdict licenses in particular localities. Both these classes of temperance laws may surprise some who hear of them, considering one's ideas in regard to such matters in the locality. An act for the better protection of contingent remainders, says that no estate in remainder, whether vested or contingent, shall be defeated by any deed of feoffment with livery of seizin. Another regulates how a joint debtor may make a separate composition with his creditor, which shall discharge the debtor making it, and him only. Another settles that on all assessments of dower in lands of which the husband died seized, the value of the lands at the time of the death of the husband, with interest from the accrual of the right of dower, shall be taken and received as the true value on which to assess such dower. Another declares unlawful, contracts for the sale of articles for future delivery, unless the contractor is then the owner, or *bonâ fide* intends actually to deliver at the specified time in kind; and the burden of proof of such ownership or intent lies on the plaintiff; and

any person who pays over money when the contract is in violation of the act, may recover it back within three months after. The legislative session of South Carolina lasted less than a month.

Georgia has enacted that "upon the death of a husband without lineal descendants, the wife is his sole heir, and upon the payment of his debts, if any, may take possession of his estate without administration, sue for, and recover the same." She also passes an act extending the scope of a part of her code, so as to provide that employing or enticing, persuading or decoying away the servant, cropper, or farm laborer of another, shall be a misdemeanor, and punished criminally as such. There is history in this. And also in another short act, which prohibits excursion trains as well as freight trains on Sunday—sensible acts, both these. The one protects against ignorance, the other against disorder and the desecration of the day of rest; the first, however, needs great care, or it may be the organ of oppression and wrong. Obviously, it is for the relief of capital against labor. Northern statutes almost always help labor against capital.

The acts of Texas were passed at a special session called for specific local purposes named in the Governor's Proclamation. They present no "noteworthy" changes whatever.

Mississippi presents a bulky volume of no less than 1,052 pages. And its examination shows much that is unnecessary. For instance, and it is a fact which is certainly greatly surprising, the book from page 200 to 257 inclusive, is occupied with special acts on the subject of the sale of liquors; local prohibition laws, a specimen of which is the following: "Be it enacted, that hereafter it shall not be lawful for any person to sell or give away for any purpose

whatever, any noxious, spirituous, or malt liquors, or any bitters containing alcohol, or any brandy peaches, brandy cherries, or other brandy fruits, or any other article or liquor containing alcohol; neither shall it be lawful for any person to sell or give away any other intoxicating liquor, nor 'to treat' any person to any intoxicating article or liquor in the town of Shugualah, in Noxubee County, or within four miles of the corporate limits thereof; and no person living within said limits of four miles shall be qualified to petition for license to retail out of said limits. And be it further enacted, that any person violating this act shall be fined, upon conviction before a justice of the peace, not less than \$25, or by imprisonment not less than ten or more than thirty days, or by both such fine and imprisonment; and in all cases the prosecutor shall be entitled to a fee of five dollars, to be taxed and collected as other costs. And be it further enacted that nothing herein contained shall be construed to prohibit the use of wine or other liquors for sacramental or culinary purposes, or by regular practicing physicians in cases of actual sickness. And if any physician shall prescribe for or give to any person any intoxicating liquor, except in cases of actual sickness rising in his practice, and known by him to be cases of actual sickness, he shall, on conviction as aforesaid, be punished as prescribed in the second section of this act." Another act says, "Each and every device or subterfuge which the jury shall deem to have been resorted to as an evasion of this act, shall be punished as a violation of the same."

Two or three of the acts call for elections of the people to determine upon prohibition; but generally they are of this positive and particular nature. There are sixty-five of them; and yet it appears there is a general license law. These are local exceptions; how much of the territory of the state they altogether embrace, would require too great study to say.

While not able myself, as yet, to adopt the theory of prohibition, I cannot but think that the grim earnestness of these laws shows a tendency of public opinion which suggests a hopeful future.

An act to provide for the regulation of freight and passenger rates on railroads, and to create a commission to supervise the same, and for other purposes, is a valuable and well-drawn law.* Its first section lays down the law thus: "The track of every railroad in this state is a public highway, on which all persons have equal rights of transportation for passengers and freight on the payment of just compensation to the owner of the railroad for such transportation; and any person or corporation engaged in transporting passengers or freight on any railroad in this state, who shall exact, receive, or demand more than the rate specified in any bill of lading issued by such person or corporation, or who for his or its advantage, or for the advantage of any connecting line, or for any person or locality, shall make any discrimination in transportation against any individual, locality, or corporation, shall be guilty of extortion." The commission constituted are to revise and settle charges, and generally protect the public against railroads. There are several supplements and appendices, and many provisions are highly self-commendatory. One of these provisions is that it shall be a misdemeanor for any legislative, executive, judicial, or ministerial officer in this state, or for any person holding any office or place of honor, profit, or trust under the laws of this state, to travel upon any railroad in this state without paying absolutely, and without any guise, trick, subterfuge, or evasion whatsoever, the same fare required of passengers generally; and it shall likewise be a misdemeanor for any officer or employé of any railroad in this state, to permit any such officer or person to

* This act is said to have been held unconstitutional. (20 Fed. Rep. 270.)

travel upon any railroad in this state without paying fare, as herein provided. The act further punishes the first offense with not less than \$25 fine; the second with not less than \$100, or county gaol not less than ten days, or both; the third with not less than \$500 and thirty days. This would be regarded as hard lines in the North. New Jersey requires the railroads to carry its officials without charge, attaining thus pretty much the same intent, without such unpleasant prohibitions.

I cannot help thinking, however, that the abolishing all passes, except for their own officers and employes, would be a right thing for the public, as well as a good thing for the roads. Few have any idea how many people ride free upon railroads. And the difficulty with railroad corporations is, that while it is by no means certain that a "complimentary" pass makes a friend, its refusal is pretty sure to make an enemy.

There is a little act which makes it criminal to sell toy pistols—worthy of all commendation and of adoption elsewhere. Another forbids the exhibition of indecent pictorial newspapers, pictures, or casts.

There are no less than sixty-six laws for the relief of individuals, some of them of a very minute character. The fashion there seems to be, not to repose much confidence in municipalities, but to have the legislature do everything—as, for instance, pay for a dead mule, repay wrongly collected taxes, refund license fees, authorize men to make and sell a patent medicine invented by their father for curing ulcers and cancers, exempt blind men from license tax, etc.

There is a line of acts in Mississippi for the erection of levees, which seems very noteworthy. The system is to authorize the designation by the Governor, of commissioners, one from each county in the particular delta, or otherwise interested, who form a body corporate, whose office it is to

protect this designated set of counties or delta. The corporation is authorized to take land for the levees, by condemnation, if need be, and then to build, rebuild, strengthen, elevate, and maintain the described levees, with full powers to do what is best, and to make all contracts for the work and regulations necessary. They have power to issue bonds of the board, binding the district, and so raise funds. To pay these bonds, a tax of thirteen mills on the dollar is laid on the front counties, and nine mills on the property in the district behind them. In case of default to pay, the like procedure for collections is authorized as in case of other taxes, even to sale of the property; and the same for the maintenance of the levee after its erection.

It is a curious fact that an act very similar, if not in principle identical with this, providing for the drainage of the large tracts of salt meadow lying upon the waters of the sound separating New Jersey from Staten Island, and upon the rivers whose confluence forms the body of water crossed by the three mile bridge of the Central Railroad of New Jersey, has been lately pronounced by the Court of Appeals of that state unconstitutional, as being confiscation, and not assessment, and as being a new thing, the last step in the advance of lawless power. And yet both schemes have their exemplar in the Mother Country, where organized effort to keep out water has been sanctioned by law, and its expense assessed upon those especially benefited, according to a measure of benefit arranged. Such protection from the flood is not as necessary on Northern waters as upon Southern; but the creation of a new Holland out of useless meadows, and the prevention of pestilential malaria, would seem to be necessities which would justify anywhere such a scheme of drainage as a public benefit.

Kentucky's statutes of last year are neither numerous

nor specially "noteworthy." I was struck with the public confidence apparently reposed in her Bar, by an act which says, that when the judge of the Jefferson Court of Common Pleas, or the chancellor or vice-chancellor of the Louisville Chancery Court should fail to attend, it shall be lawful for the members of the bar in attendance on such court to elect a special judge to hold such court for the occasion. Not but that it is a very good way, however, to get a good judge.

It is likewise pleasant to see how strongly the idea of public education has taken hold of the popular mind here, as in all the Southern states, and how their sense of justice and of charity leads them to provide for the education of the colored race, and the care of such of them as, through blindness or other infirmity, make claim upon compassion. I fail to see, however, the need of one act entitled "An act to provide for the liberty of conscience," which enacts that persons committed to state prison or other penal confinement shall be allowed spiritual advice and spiritual ministration from any recognized clergyman of the denomination or church to which such persons may belong or have belonged. A good man who wished to see a prisoner could hardly be denied. But one would think the chaplain, whatever his denomination, might do his duty without infringing liberty of conscience. There is an act which rebukes Northern civilization by prohibiting the sale or circulation of any paper, book, or periodical, the chief feature or characteristic of which is to record the commission of crimes, to display, by cuts or illustrations, crimes committed, the actors, pictures of criminals, desperadoes, fugitives from justice, and cuts or illustrations of men and women in improper dress, lewd and unbecoming positions, or men and women influenced by liquors, drugs, or stimulants.

Evidently certain journals in certain large cities find little favor in brave old Kentucky. There is an act illustrating a comity which deserves adoption elsewhere, providing, that where there are non-resident *cestuis que trust*, with a trustee also non-resident, and no trustee in Kentucky, the foreign trustee may come there and collect and remove trust property. The action of such foreign trustee, however, is to be authorized, after petition filed, by a court of chancery in Kentucky.

An act of thirty-seven pages amends and reforms the common school laws of the Commonwealth, and with rare sagacity and good sense.

Another act rebukes the North again, by providing for the delivery of Bibles and Testaments to the convicts of the penitentiary and the inmates of the penal charitable institutions of the state. And another makes contracts for stock, bonds, grain, cotton, or other produce or personalty, on time, where either of the contractors have no intention or purpose of making actual delivery or receiving the property in specie, gaming contracts, and declares them void, and punishes the contractors criminally.

Thus ends the review of the legislation of the South, partial and incomplete because so many of the strongest states have had no legislative sessions since our last meeting, but yet suggestive that great change for the better is going on. There is perceptible a simplicity of intention, a desire for the improvement of all its people, for universal education, and for the support of wholesome charities; a hearty belief in Christian morals and the Christian religion, and a love of all right, which deserves and cannot but elicit admiration and respect. The patriot, the lover of his whole country, cannot examine these books of laws without greater assurance of a happy future.

Among the Western states there has been no lawmaking since last year in Illinois, Indiana, Michigan, Minnesota, Wisconsin, Nevada, Nebraska, Colorado, or Oregon. The laws of Ohio, Iowa, and Kansas, therefore, only require notice.

Ohio has a session volume of 450 pages, but it contains very little not local in its character. It strikes one as strange to find among these, an act "to amend an act to provide a license on trades, business, and professions carried on in cities of the first grade," etc., which reads thus: "Astrologers, fortune-tellers, clairvoyants, palmisters, and seers, shall pay a license of three hundred dollars per annum." The same act strikes from the original the word "mediums." This class of "business" in some states comes under obtaining money by false pretenses, and, I believe, is made in some, by special statute itself, a crime. It lives, too, upon ignorance and silliness. Licensing it has not even the arguments in its favor which are used by those who advocate the license of prostitution, for that is defended by the suggestion that the vice it lives by is universal and irrepressible, and that regard for the health of the community requires that the followers of the "business" be under official care.

Ohio, like other states, is vexed with the question of contract labor in penitentiaries. With New Jersey, she has gone beyond New York, and has enacted "that the contract system of employing convicts shall not exist in any form in the penitentiary, but the prisoners shall be employed by the state, and in such way as in the least possible manner interfere with or affect free labor, and the managers shall use every effort to so dispose of all merchandise as to avoid injurious competition with any business of citizens of the state."

This is a difficult and, considering the interests involved, a delicate subject. But if convicts are to be kept confined and yet work, they must be employed in manufacture. The products of their toil must be sold, and hence competition with outside labor would seem unavoidable. The state has the alternative either herself to carry on trade, or to hire out the services of these victims of her laws. There are grand objections to either course, both for the good of the convicts and of the people at large.

I observe another section in the same act certainly "noteworthy." The earnings of prisoners, not to exceed twenty per cent., are to be placed to their credit respectively, and the funds thus accruing shall be paid to the prisoner or to his family, at such time and in such manner as the managers shall deem best; provided that at least a quarter thereof shall be kept for and paid to himself at the time of his release, it being provided, beside, that misconduct may cancel all or part of the credit.

"It shall be the duty of said board of managers," says this benevolent act, "to maintain such control over all prisoners as shall prevent them from committing crime, but secure their self-support and accomplish their reformation."

All praise to the philanthropy which has originated such an act, and to the state which has adopted it! With some doubt and fears we shall hail the experiment, and wish it all success. We believe that the worst natures respond to kindness, and that there are many more redeemable by proper treatment than are generally supposed. But reformed convicts are few and far between—to be numbered, indeed, among the heroes of mankind.

The supposed necessities of the colored race have doubtless induced a statute which enacts that "all persons within the jurisdiction of the state shall be entitled to the full and equal enjoyment of the accommodations, advantages, facili-

ties, and privileges of inns, restaurants, eating-houses, barber-shops, public conveyances on land and water, theatres and all other places of public accommodation and amusement." The public feeling which has produced this law has shown itself elsewhere. In New Jersey a special message from the Governor called the attention of the Legislature to the fact that in the Dutch settled county of Bergen, the managers of a cemetery had refused to let a colored man be buried there, whereupon both political parties rivalled each other in their alacrity for the passage of a law requiring that "this place of public accommodation," to use the Ohio phrase, should not be the exclusive property of the other race. In Massachusetts, a special law compels life insurance companies to insure the lives of colored people on the same terms with those of other people, apparently forgetting that tables of longevity might make the risk in one case different from that in the other.

It may be doubted whether the privileges of this no longer unfortunate race will not be more increased and enhanced by converting public opinion to their side, than by force of statutory enactments. The day is near, I hope and believe, when the prejudices under which they have for centuries labored, will all be dissipated here as they have in other lands; when all will feel and act in accordance with the great truth adopted and preached by the Apostle to the gentiles: that God has made of one blood all nations that are upon the earth. But the advent of that day will be hastened not by statutes, but by the self-improvement of the race itself, now so evidently going on; by manifest desert on the one side, and Christian charity on the other.

An act appointing a state inspector of the sanitary condition of shops and factories, is another illustration of the advanced philanthropy which seems to characterize Ohio,

whose appropriation bill for the year includes about \$740,000 for public charities.

A very valuable act provides for the renewal of records destroyed by fire.

There is an act additional to that noticed on the subject of prison discipline, which I cannot but think very "noteworthy." It allows sentences to be simply to the penitentiary, leaving the managers to determine its duration, within the provided maximum term, evidently having regard to the prisoner's behavior. Of this a daily record is kept. The convict who passes the entire period of his imprisonment without violation of the rules, is entitled to immediate restoration to citizenship; he who, not being able to show such a record, shall at the end of a year present a certificate of good conduct, signed by ten or more reputable citizens of his place of residence, is then entitled to such restoration; and the period of imprisonment diminishes to the well-behaved, five days each month the first year, seven the second, nine the third, ten thereafter. All this is not new, but some of it is; and all is merciful and philanthropic to a degree.

It is perhaps true, however, that under such a system many a poor but honest wretch, victim of disease or want, might almost pray and seek the comfort, health, and merciful consideration of a penitentiary life. It is possible, we suppose, to be too humanitarian. Imprisonment is partly retribution, partly the protection of society through the prevention of crime. A penitentiary should not be other than a terror to evil-doers. It *may* be so managed as that it shall lose this element, and be little more than an enforced boarding-house. And yet the very word implies the infliction of suffering, if it does not that this infliction shall be severe enough to produce penitence.

I shall only notice further an act amending former laws

as to the rights of married women, proceeding still further in the direction adopted by statutes elsewhere. By it a husband is neither to be liable for his wife's contract before marriage, or for her *tort* afterwards, nor upon any contract by her, except to the extent of any separate property of hers which he has acquired by ante-nuptial contract or otherwise. And the wife whom her husband deserts, or when he, from intemperance or other cause, neglects to provide for his family, may make contracts in her own name for the labor of her minor children, and sue for and collect their earnings. She may file a petition in the county court alleging this desertion or neglect, and upon proof thereof the court must enter judgment, vesting her with the rights, privileges, and liabilities of a head of the family, as to the care, custody, and control of her minor children, and with all the powers of a *feme sole*, as to disposing of her real property, free from the custody of her husband. Verily Ohio has established herself as the earthly Paradise of deserted or neglected married women!

Iowa has passed two hundred and three acts, almost all of them without interest elsewhere. A little act, that it shall be unlawful and punishable with thirty days county gaol to "knowingly sell, present, or give any pistol, revolver, or toy pistol to any minor," goes rather far in a very right direction. A man is a minor until twenty-one.

The anti-liquor laws of Iowa seem very stringent. Manufacturing intoxicating liquor is a crime; so is its sale. The buildings in which these offences are perpetrated are nuisances and to be abated. Common carriers of liquors to unlicensed consignees are liable, and their agents criminal. The spirit of the act may be understood from its last section. "Every person who shall, directly or indirectly, keep or maintain by himself, or by associating or combining with

others, or who shall in any manner aid, assist, or abet in keeping or maintaining any club-room or other place in which intoxicating liquor is received, or kept for the purpose of use, gift, barter, or sale, or for distribution or division among the members of any club or association, by any means whatever, and every person who shall use, barter, sell, or give away, or assist, or abet another in bartering, selling, or giving away any intoxicating liquors, so received or kept, shall be deemed guilty of a misdemeanor, and upon conviction therefor, shall be punished by a fine of not less than \$100, nor more than \$500, or by imprisonment in the county gaol not less than thirty days nor more than six months."

My task is well-nigh done. I congratulate my auditors. What can be dryer work, even to lawyers, than the recital of statutory law? But I have one state more to review—Kansas—and yet I have scarce anything to say of her either. She is one of those happy commonwealths who are satisfied with a dose of new law once in two years. In all such, however, power is given to the governor to call her legislators together, and the tiny pamphlet of "session law," with which I have been furnished from that state, is prefaced with a proclamation by which he announces, "that whereas, there are about 2,000,000 head of cattle, valued at \$50,000,000, and sheep valued at \$2,300,000, that constitute a large and valuable part of the wealth of this state, and whereas a very contagious and alarming disease, known as the foot and mouth disease, has been brought into the state, and said disease is declared by competent and reliable veterinary surgeons, whom I have had to examine it, to be highly contagious and incurable; and whereas, there is no power in the executive or other branches of the state to quarantine, destroy, stamp out, or prevent the spread of that contagion; and whereas, the executive has been requested by a number of boards of county

commissioners, and by large and respectable public meetings, letters, telegrams, and personal requests to convene the legislature in special session, so that it may pass proper laws to eradicate and stamp out the disease; now, therefore, I, Governor of the State of Kansas, as on account of the extraordinary circumstances affecting the livestock interests of the state, do hereby convene the legislature."

One or two laws not relating to the stamping out process were crowded in and passed, but they were not "noteworthy."

Federal legislation interesting to this Association has been, during the past year, very meagre. Using the words of the distinguished member of the General Council from the District of Columbia, I remark, that "the session lasted more than seven months, and its records show the passage of 113 public acts, 44 public resolutions, and 70 private acts."

The rest of the legislation at the late session is occupied with matters affecting merely the ordinary administration of the government, changes in laws of purely local application, and grants of one kind and another for the benefit of private individuals and corporations, and has no special interest, of course, for the Bar Association. The conclusion from the review of the work at the last session is either that there is very little for Congress to do in the field of national legislation, or that Congress has left much undone. I believe the latter conclusion is the one generally accepted by the country.

One of these acts relates to official oaths. It repeals the iron-clad oath, and thus, and by force of a separate section, admits to office under the United States, all not excluded by the Constitution, except those who, having held a commission in the army or navy at the beginning of our Civil War, served in the confederate army, navy, or civil service.

Another act punishes the counterfeiting or fraudulent passing within the United States of notes, bonds, or other securities of foreign governments.

Another establishes a Bureau of Animal Industry, seeking to extirpate contagious diseases among animals, and prevent the exportation of diseased cattle.

Another, perhaps most important of all, seeks, by removing burdens on the American merchant marine, and by other means, to encourage the American foreign carrying trade.

Another politic and philanthropic act establishes a Bureau of Labor Statistics, under the charge of a commissioner, who shall collect information upon the subject of labor, its relation to capital, the hours of labor, the earnings of laboring men and women, and the means of promoting their material, social, intellectual, and moral prosperity.

Another constitutes a Board of Navigation in the Treasury Department. It is an act evidently designed, with the one already noticed, to renovate the American merchant marine.

Another act is in aid of Indian civilization, and authorizes the expenditure of money for erecting, furnishing, and repairing school buildings for the further instructing and civilizing Indian children dwelling west of the Mississippi.

Noble objects have all these laws. Patriotism and philanthropy should hail them cordially. The obliteration of the disabilities made necessary by the Civil War, and the condonation by a united people of all offenses against the Union; the restoration of our merchant marine, so far as possible, to its ancient prosperity and usefulness; the prosecution of the civilization of the Indian tribes, through the instruction in the arts of life of their children—what grander objects could Congress seek than these, having in view the peace, greatness, and prosperity of the country? Three principal subjects which, to my mind, at this day call

specially for patriotic effort, are the restoration of brotherly love between North and South, the restoration of our slaughtered commerce, and the civilization of the Indian tribes and their adoption as citizens into our fold. Add to these two more, the extinction, through wise civil reform of the vile maxim that "to the victors belong the spoils," and the solution of the great problem how to make friends of capital and labor, and the field of statesmanship is well nigh covered. Happy the day which would see us all united upon these grand objects! Woe betide our beloved land if somehow party spirit, communism, and inordinate greed of gold, and gold-bought power, be not eradicated or permanently bridled.

I cannot leave this review of legislation without calling attention to the argument it presents in favor of only biennial legislation. Why should so many law manufacturing shops be busy three months, on the average, every year, to produce, at last, so little? Think of it, thirty-eight regular statute manufacturers, and as many more to come as there are territories now to be constructed, busy grinding out laws, which override common law, civil law, canon law, and the decisions of all courts upon them, or either of them, and with how much appreciable improvement? Think of the expense of all this! But that is the lowest argument. Think of the fraud, bribery, and corruption which festers in and around legislatures during their process of gestation, known to all men, seen by scarcely any; punished, when, out of New Jersey? Think of the agitation caused by each session in the public mind, its effect upon business, how it crows enterprise and checks business effort. Think of the crudeness generally of the schemes devised, and the frequent obscurity and illiteracy of the language adopted. Think of the relief felt on every hand when the nuisance comes to an end!

Annual sessions may probably be necessary for Congress, and possibly for such a great commonwealth as New York. But I think of no other state in the Union which might not, at least, try the experiment already adopted by so many states.

I could almost wish that this had been the session year in the states of the great west—the west of to-day—not simply that of half a century ago, that we might have seen on their statute books the indications such books always give of the character of a people, their sentiments, their progress, and their future. For the west, the great states beyond the great river, and stretching over the Rocky Mountains to the Pacific Ocean, states, which, half a century ago, were scarce more than a wilderness, populated by the savage and wild animals, upon whose capture they were supported, is the type and picture after all of what this country is to be. Grand in its extent, its rivers, its lakes, and its mountains; grand in its enterprises, which dwarf all precedent audacity; grand in its fertility and its agricultural productions; grand in its wealth, whether dug from the bowels of the earth, or expelled by the blasting of its rocks, or gathered from its numerous flocks and herds, or from the wonderful cultivation of its wonderful farms; it gives promise of a future in which humanity may attain greater and more admirable development than elsewhere on the habitable globe. Eastern, Middle, and South, yea, the states, once western now central, lying east of the Mississippi, are belittled by the strides of the west beyond the river. It is the land for the fairest and speediest trial, and for the most unprejudiced settlement of all vexed questions, social or political. No Puritanism anchors it to strict and defined views. No Quakerism, as in the land of Penn, or inheritance of Holland blood, as in New York, or commingling of these and other conservative elements, as in New Jersey; or long

habitation to the system of slave labor, as in the states below Mason and Dixon's line, embarrass or in any wise give tone or color to their ideas. They are more cosmopolitan than any region under the sun. Their people is made up almost of every nation under heaven. Their laws and their social life ought to be the best, for they have all the past and all the present for their teachers. If they are so wise as to rise above mere acquisition as the motive of social life, to enforce universal education, to encourage in their midst institutions for the spread of learning and science, to adopt and cherish the freedom which comes of the open Bible—which is founded on true religion, which recognizes the Most High as the Monarch of all nations, and obedience to the law as obedience to Him; if, in short, they build on the foundation of education and religion, the civilization of the great west will be the crowning triumph of mankind—and in the states which constitute it will be verified and fulfilled the prophecy so familiar to us all:

"Westward the star of empire takes its way;
The four first acts already passed—
The fifth shall end the drama with the day—
Time's noblest offspring is the last."

May I be permitted, now that my allotted task is done, to add a few words which seem to me called for by the occasion.

To-day begins the eighth year of this Association. Its conception was eminently happy. Its popularity is exhibited by its yearly increase in attendance, and its present large number of members. But has it attained its avowed objects? It *has* "upheld the honor of the profession of the law." It *has* "encouraged cordial intercourse among the members of the American bar." In these respects I claim for it high distinction. These meetings which bring and keep so many

of us together, coming from all portions of this wide Union, have done more to unify the American bar than anything else throughout its history, and yet they have only begun to do their work. Nor is the benefit thus effected easy to be exaggerated. It makes us realize that we are not merely of the Bar of Massachusetts, of New York, or of New Jersey, of Louisiana, or South Carolina, or Texas, or California—but of the Bar of America. It stimulates our curiosity as to the peculiarities, advantages, or defects of the laws of commonwealths outside our own. It tends to lead us to forget state divisions, and to love the whole great country.

But what have we done, so far, to “advance the science of jurisprudence”? What to “promote the administration of justice”? What to “promote uniformity of legislation throughout the Union”?

We have attempted to promote the administration of justice. The situation of the docket of the Supreme Court of the United States is a shame and a disgrace to jurisprudence. Appellants wait three years before they can be heard. This is established fact. The pace of the court through its list is measured with accuracy, so that you may learn at the beginning of a term with well-nigh precise certainty on what day your cause will be reached and called. Cases, by the time they reach that tribunal, are largely winnowed of unnecessary matter. Printed briefs, rather say arguments, are in the hands of the Court before hearing. Counsel are economically restricted in time. The Court give four hours each week-day but one to hearings. Their sessions begin in October, and with little intermission conclude in May. While they last, their labor is burdensome. Perhaps they might increase the length of daily session and the length of their terms. But this, doubtless, would interfere with time for incubation, and might not really benefit the suitors. Outside relief must somehow be given. Could this Associa-

tion have united on a scheme, it would have had great weight. But, unfortunately, minds here differed. That variance of opinion was represented in Congress. Besides, legislation even upon such a subject is embarrassed by political strife. The advantage of one plan discussed in this Association was, that it created no new judges, and, therefore, neither party, as such, had any motive to oppose or delay it. The great practical objection to the other plan is, that one party or the other will always be in the way of its passage, because it will not agree that its opponent should supply all the new judges. And as for arranging for a division, that would be contrary to that established maxim already mentioned, superior in political force to Holy Writ, "To the victors belong the spoils!" So the only effort on our part to promote the administration of justice has failed. What other effort have we made?

We have done something tending to promote "Uniformity of legislation throughout the Union." A very valuable paper on the recording laws of the United States, by an eminent lawyer, judge, and author, projected changes which commended themselves to every mind, and which were duly discussed, published, and there was the end. I believe that one state has adopted an act as to the acknowledgment of conveyances which was approved by this Association. An able report has been made on the subject of marriage and divorce, and the necessity of uniform laws on this subject. If anything further has been done, or any change of any state law recently been made in this most important direction, I have not been so fortunate as to hear of it.

We have done something too to advance the science of jurisprudence. That is, papers have been read here at our annual meetings, by distinguished and able lawyers, discussing subjects of great moment, and thus have tended, as does every thesis upon the law, to accomplish this high end. And, yet, comparatively, has much been done?

I do not think our constitution is at fault, nor its machinery. Annually, in conformity with the constitution, committees are appointed for the year ensuing—on jurisprudence and law reform; on judicial administration and remedial procedure; on legal education and admissions to the bar; on commercial law; on international law.

What has been done by these committees? How many reports have been made? That on legal education and admissions to the bar has reported; and beneficial effect has followed in at least one state. The agitation of that subject, and of the proper education for the bar, has, I believe, done much good. It has braced up the practice, if it has not improved the rules, in one state that I know of at least; I have hope that it has elsewhere.

But what about jurisprudence and law reform? What about judicial administration and remedial procedure? What about commercial law? What about international law?

Perhaps there is defect in the practicalness of otherwise well-devised machinery. It must be difficult to report generally upon such subjects. Any report to be profitable must select some one topic from those connected with the large subject matter, and devote attention exclusively to that. It has occurred to me to suggest an addition or a change in the present plan of our meetings. It is the same successfully adopted in a leading religious denomination for a meeting termed its congress. Let the executive committee determine upon some question or topic connected, we will say, with law reform, and request four members, whom they shall select, to prepare and conduct a discussion of it, arranging, if possible, that there shall be difference in the views presented. Then, let the subject, after they are through, be open to debate by speakers limited in time.

Besides this addition to the interest of our meetings, let

the efficiency of our Association be enhanced by determining upon some one or two amendments to the law—say upon the subject of the acknowledgment and record of conveyances, and upon that of marriage and divorce; as to which, all will admit, the laws of the states should be uniform. And then let a committee be appointed of one from each state, whose duty it shall be to bring the measure before its legislature, and, if possible, secure its adoption. The mere motive of obtaining uniformity will be a strong argument with every legislature, and, by prudent action on the part of the committeemen, it will not be difficult to secure the adoption of a wisely drawn statute.

“Ars longa, vita brevis.” Let us strive, brethren and friends, to make these delightful convocations something more than simple occasions of enjoyment. Let us strive to become a power—a power for good; a power which shall be recognized; a power to tighten the bonds of union—a power which, through the welding together of the strong minds and earnest hearts of the many thousands engaged in our noble profession, and through the attainment, by our means, of uniform laws governing social and business life, shall aid the rail and the telegraph in that glorious work, the fruition fully of that which is our national motto; a motto adopted, I must believe, not simply as descriptive, nor even as also prophetic, but, besides, as briefly declaring the duty of every citizen in reference to his state and to the nation,—*“E Pluribus UNUM.”*

ANNUAL ADDRESS
BY
JOHN F. DILLON.

AMERICAN INSTITUTIONS AND LAWS.

Mr. President and Gentlemen of the Association :

THE EMBARRASSMENT of selecting a suitable topic for the Annual Address before your Association must have been felt by all who have previously undertaken it, and may easily be imagined by others. Shall it be a technical reading of some important statute? a discussion of some controverted question connected with the law or its administration? or shall it be more general in its scope and purpose? This seems to be settled by precedent, for I find that each of the Addresses previously made on the like occasion, although directly relating to our profession, and imbued and tinctured with a legal flavor, has been of a general or *quasi* popular character.

While I assent, without demur, to travel in the accustomed path, still the question recurs,—What general topic shall be selected? and this, Mr. President and gentlemen, has been determined almost by accident. I found the invitation which brings me before you to-day awaiting my return from a recent first visit to the Pacific Coast. In the long journey, some old notions were modified; others were confirmed; and some new vistas of our institutions and laws, here and there, opened before me: and yielding to the vividness and force of last impressions, I resolved to

accept the Invitation, and to address you upon the GENERAL CHARACTER OF AMERICAN INSTITUTIONS AND LAWS; and to offer for your consideration some observations upon the present, and some speculations concerning the future, condition of our Jurisprudence. It cannot be inappropriate to discuss such a theme before members of the Bar gathered together from every quarter, and almost every State of the Union.

The laws of every enlightened nation and its corresponding judicial system, ought to be, and to a great extent necessarily are, adapted to the traditions, manners, habits, and sentiments of its people, to its physical situation and character, to its political and economic condition and circumstances. If, for example, we should lay side by side the existing French and English systems of law and jurisprudence, and view them in the abstract as *doctrinaires*, we would probably have little hesitation in awarding the general superiority to the latter. Yet nothing of a speculative nature is more certain than that it would be difficult to conceive of a greater misfortune to each, than a complete exchange of their systems of law and jurisprudence.

How far our system of law is wise and consonant with our institutions; how far the general laws of that system are adapted to the genius and wants and to the industrial, commercial and social life of the people; and how far the system itself, or the general condition of the laws, admits or requires amendment or change, are, indeed, complex and difficult, but, nevertheless, important, and it may be useful, inquiries.

In 1878, while holding a term of court at Omaha, I was one day pleased on entering the Hotel to see the stately form and familiar face of the late Mr. Justice CLIFFORD. He was accompanied by his wife, who with an affectionate fidelity so well known, was, throughout his public career,

as inseparable from him as his shadow, always going with him whenever he journeyed as a justice in eyre, or settled down to the labors of a term in Washington. I expressed my surprise at seeing him beyond the Missouri River, remarking that I had never before heard of his being out of the orbit, which embraced his circuit and his yearly journey from Portland to Washington and return. He answered, "Yes, I am surprised at myself. In the course of my long judicial service, I was never out of what you call my orbit but once or twice, and then not far or long. But this time, I yielded to the persuasions of Mrs. CLIFFORD and the children, and I have been to the Pacific Coast and am so far on my return." With judicial gravity he added—"Two things I wish to say. The first is that I have enjoyed every mile of the route. The second that I reproach myself with having been so long a judge of the Supreme Court without an adequate conception of the vastness and grandeur of my country." Chief Justice MARSHALL, according to the pleasant reminiscence recalled by the esteemed and deeply lamented Mr. POTTER, in his address before this Association at its fourth meeting, assumed the knowledge which Mr. Justice CLIFFORD eventually acquired by experience.*

*"In the simplicity of MARSHALL'S day, when the only indulgence was a bottle of Madeira in bad weather, Chief Justice MARSHALL would, it is said, occasionally ask one of his associates to step to the window and see how the weather was, and when the judge was compelled to report that the sky was cloudless and the sun was shining brightly, MARSHALL would pronounce this judgment:—"Well, our jurisdiction is so extensive that I am sure it must be raining within it somewhere to-day, and I think on the whole, we will have our bottle of Madeira."

(Address of Mr. Clarkson N. Potter, published in the Report of the Fourth Annual Meeting of the American Bar Association, p. 193.)

MR. PRESIDENT: Every nation must stand for, embody and represent some adequate, underlying principle which permeates, vitalizes, and binds it together. True, all sovereignty must be founded on territory, since without territory it is impossible to conceive of national existence. But real national grandeur and national exaltation are not measured by territorial area, but are determined by the moral and intellectual character, aspirations, ideas, aims and purposes of its people.

OUR SYSTEM OF GOVERNMENT, State and National, embodies and rests upon the fundamental proposition of the absolute and essential civil and political equality of all its citizens, whose collective will, expressed by majorities, is the rightful and only source of all political power, and the only supreme majesty on earth. By this principle, we must stand or fall. In adopting it, we reversed the accepted doctrines of the old world, England included; which doctrines were "that all popular and constitutional rights, all useful and necessary changes in legislation and administration, can only emanate from the free will and concession of the monarch or instituted government." You will recall the discussion of this subject by Mr. WEBSTER in the celebrated *Hülsemann* correspondence. The political doctrine he asserted, so familiar to us, as well as the elevated style and the sustained dignity, force and logic of this remarkable state paper, combined to fix upon it the attention of the contemporary world. Is this fundamental principle sound? As applied to our Government, it has now stood the test of a century, overcoming our fears, strengthening and establishing our faith. I do not purpose to discuss its soundness. The stage of discussion ended with us more than a century ago. We then adopted it. We staked everything upon it; our Institutions to-day have

no other foundation, and by it, "we must sink or swim, live or die, survive or perish." We believe and maintain, indeed, that such a Government rests upon the broadest, deepest and most secure of all possible foundations, since it rests upon the consent and interest of *all*; in a word upon the sovereignty of society at large, which possesses all the powers necessary to preserve and promote the general welfare and safety,— "powers which," even BLACKSTONE admits, "no climate, no time, no constitution, no contract, can ever destroy or diminish."

It would seem to result from this that our self-governed Nation is fitted to live, that it ought to live, and that it will live so long as it promotes the interest, protects the rights and liberties, and secures the general welfare and happiness of its people.

LET US RISE, IF WE MAY, TO ADEQUATE CONCEPTIONS. We have already a population exceeding 50,000,000,—a number greater than all the other peoples who speak the English language,—inhabiting 38 States and 9 Territories, reaching in unbroken continuity from Ocean to Ocean, and from the Lakes to the Gulf. Behold the map of our country. How fortunate that the great mountain ranges and the intervening rivers run from north to south,—nature's eternal ligaments. If the Rocky Mountains or the Mississippi river had been co-incident with what was erewhile known as Mason and Dixon's line, the Nation probably had not come out of the Civil War undivided. Consider not only its territorial extent, but the variety of climate, soil, productions and resources. Territory suited to the most varied agriculture; vast plains adapted to grazing; coal and iron lying side by side; long stretches of mountain ranges rich with deposits of the precious metals. If we apply to the

future, the law of our past growth (and why may we not?) there are those present who will live to see our country with a population of 100,000,000 of people.

SHALL WE, THE LAWYERS OF AMERICA, be insensible to the responsibilities growing out of our two-fold relations and duties,—duties as citizens towards our country, and duties as lawyers towards its laws and jurisprudence.

I offer no apology for this line of remark, since it is impossible properly to estimate the merits and value of any system of laws, dissociated from the institutions out of which those laws spring and to which they relate, and since also it ought never to be forgotten that our primary and fundamental relation is that of citizens. We were citizens before we were lawyers: the lawyer does not *merge* the citizen. It is not uncommon to hear it said that although we have not as yet gone to pieces, we are liable to do so: at any rate, the practical workings of our institutions are unsatisfactory, and they have failed of real success. There will be found in almost every considerable city of Europe an American Colony, where it is rather the prevailing tone, especially among those without social distinction at home, to talk in this deprecatory strain, and to award to other governments and institutions a superiority to their own. As more than any other class, the lawyers of a century ago shaped and moulded our institutions,* it is especially the duty of the lawyers of to-day, to show, in their lives and conversation, that they appreciate at their undiminished value the free and

* In one of the greatest of all his speeches, "For Conciliation with America," March 22, 1775, BURKE observes of the American Colonies, "*In no country, perhaps, in the world, is the law so general a study. The profession itself is numerous and powerful and in most provinces it takes the lead. The greater number of the deputies sent to Congress were lawyers. I hear that they have sold nearly as many of Blackstone's Commentaries [then recently published] in America as in England.*"

popular institutions of their country, and to acknowledge that howsoever much we owe to Law, we owe more to LIBERTY.

Our institutions failed of success! I deny it. A thousand times, I deny it! In the name of every man, who, like myself, has come through the terrible ordeal of poverty, and knows what it is,—in the name of the unnumbered and unborn thousands of generous youth, who must yet walk barefoot upon the heated ploughshares of this ordeal, I deny it; for the Genius of our Institutions will attend them, unseen, throughout the fiery trial, and give them a safe deliverance. What, let me ask, is the cause of our unexampled growth, our matchless prospects? Not alone, or chiefly, a favored climate and a fertile soil, but the magnetic force and marvellous power of our free institutions, whose chief glory is, that every man is equal before the law, whose priceless benefaction is, that every man has equal opportunities.

It is, Mr. President, with the LAWS AND THE LEGAL INSTITUTIONS of such a nation—founded upon the sovereignty of the public will—with the cherished traditions and rich heritage of its past history and achievements—with its present greatness and grandeur—with the bright visions of the future which it opens to our view, and which expanding illimitably as we gaze swell our hopes and exalt our pride;—a homogeneous people, widely distributed over a territory of more than imperial extent, with a common language, with common interests, with common aspirations and hopes;—it is the laws and legal institutions of such a country, that are placed under the immediate guardianship of the Bar of America, and in no small degree of this Association, which is National in its membership and objects.

THE LAWYERS OF AMERICA *ought especially to remember that the strength of the nation largely depends upon its laws and the manner in which they are administered.* Are the laws just and are they justly administered? The inquiry must be answered by the divine test: "By their fruits, ye shall know them. Do men gather grapes of thorns, or figs of thistles?" JUSTICE is the fruit of good laws, well executed; and "Justice," says Sir JAMES MACKINTOSH, in his famous lectures delivered in Lincoln's Inn Hall, "is the permanent interest of all men and of all commonwealths." Conscious of its general truth, we give a ready assent to this sentiment, without often pausing to inquire why it is that Justice is of such commanding and supreme importance to the nation as well as the individual. It is the justice of good laws, well enforced, that restrains and punishes the criminal; that erects the only effectual barrier against the uncurbed and multitudinous passions of men as they come surging on with the power of the Ocean, and proclaims "Thus far and no farther;" that protects with absolute impartiality every *right* recognized by the law, whether in favor of natural persons or corporate, of the weak or the strong, against any who menaces or invades it; that stands as the impersonation of the highest attribute of God, not passively with her scales in equipoise, but with flaming sword, to guard the injured and the innocent, and to strike down the high-handed or the fraudulent wrong-doer.

The most satisfactory ideal I have ever been able to form of Justice is embodied in the picture of a Judge courageous enough "to give the Devil his due," whether he be in the right or in the wrong.

It is to protect public and private rights that courts, with their judges and officers, their jurisdiction and machinery, are established and maintained. Their usual function, their most obvious use, is to decide civil and

criminal causes. But this is far from the measure of their usefulness. We readily see how important the administration of Justice is to the individual, but why is it so important to the Nation? What, however, let it be asked, is the Nation but the aggregate of individual citizens? In our times, certainly in our country, no Government is secure that does not rest upon the interest and affection of the governed. Ordinarily, when things are moving on in the even, accustomed tenor of their way, we lose sight of the vital dependence of National Life upon National Justice. But let the safety of the Nation be threatened from within or without, in the pressure and stress of such an exigency, which comes sooner or later to all nations, then is instantly perceived and felt the vital relation between the National Justice and the National Existence. If all *interests* in the State, those of labor and those of capital, which are always closely allied and rarely antagonistic except as the result of laws which operate unjustly upon the one or the other; if all *persons* within the State, regardless of birth, race, religion, or condition, feel that the State is the highest embodiment of practical beneficence, and surely to be relied on to do equal and exact justice to all men and all interests, then in the moment of peril all persons rise and rally, dilated and transfigured by a sublime and irresistible patriotism, bringing as free-will offerings their treasure and lives to defend and preserve laws and institutions which they have found to be so dear. Then especially it is that the strength of popular institutions, such as ours, is revealed and demonstrated.

IF THESE OBSERVATIONS BE WELL FOUNDED, can the lawyer, statesman or citizen conceive any inquiry more important than an examination into the character and condition of the laws and jurisprudence of his country?

I THEREFORE PURPOSE to attempt a survey, necessarily

brief, of the general nature of our system of laws and its practical workings, with a view to see how far it is consonant with our political institutions, and adapted to the temper and wants of our people, and with the further view to see how far it deserves, on the one hand, the eulogies so often pronounced upon it, or on the other, the complaints so frequently made against it. Such a survey will, moreover, tend to define the extent to which the "choice and tender business" of introducing changes therein, seems to be practicable and expedient.

It is observed of the constitution of the human mind, that it "continually oscillates between an inclination to complain without sufficient cause, and to be too easily satisfied."* Either extreme is injurious. If we erroneously conceive an institution or system to be perfect, it induces self-satisfaction and inactivity. If we magnify its defects, it may discourage the needful attempt to remedy them. Let us come then to this inquiry, not as partizans, nor with the zeal and bias of the advocate, but with the "cold neutrality of impartial judges." "Paint me as I am," was the command of OLIVER CROMWELL to LELY. "If you leave out the wart, the scars, or the wrinkles, I will not pay you a shilling."

NOW, THE GREAT FACT, which as we approach this subject, meets our view, is, THAT THE COMMON LAW (including in the phrase "Common Law" as here used, the supplemental equity system of the Court of Chancery which grew out of the Common Law and constitutes a part of it), UNDERLIES THE WHOLE SYSTEM OF AMERICAN JURISPRUDENCE. The expression "the Common Law" is used in various senses: (a) sometimes in distinction to statute law;

* Guizot, *Hist. Civ. Europe*, Lect. I.

(b) sometimes in distinction to equity law ; and (c) sometimes in distinction to the Roman or Civil Law. I use it in this Address in the latter sense. I do not stop to inquire how the common law came to be introduced here, and adopted by us. I deal with the fact as it exists, which is, that the Common Law is the basis of the laws of every State and Territory of the Union, with comparatively unimportant, and gradually receding, exceptions. And it is indeed a most fortunate circumstance, that divided as our territory is into so many states, each supreme within the limits of its power, a common and uniform general system of jurisprudence underlies and pervades them all.

Taking into consideration the genius and situation of our people, and the nature of our political situation, at which with this view I have already glanced, the inquiry presents itself what is the general character of the Common Law? What its adaptation to our people and our situation? what its merits? what its defects?

THE FIRST OBSERVATION I submit is that the COMMON LAW, as well as the institutions which it developed or along side of which it grew up, is PERVADED BY A SPIRIT OF FREEDOM, *which distinguishes it from all other systems and peculiarly adapts it to the institutions of a self-governed people.* It is clearly established by the laborious and learned researches which have been more recently made that the germs and elements of this law and of English polity are of Germanic origin.* The Saxon Conquerors of Great Britain were not mere bodies of armed invaders. They went to England, during two or more centuries, in families and communities. What manner of men were they? Guizot, certainly no partial witness, dwells upon the fact that the distinguishing character of the Germans was "their powerful sentiment of personal liberty, personal independence and individu-

* Stubbs' *Const. Hist.* chap. i, *et seq.*

ality." He affirms and repeatedly reiterates, that it was they who "introduced this sentiment of personal independence, this love of individual liberty, into European civilization; that this was unknown among the Romans; unknown in the Christian Church; and unknown in nearly all the civilizations of antiquity. The liberty which we meet with in ancient civilizations is political liberty—the liberty of the citizen, not the personal liberty of the man himself."*

Thus conquering and colonizing England, they carried with them "from lands where the Roman Eagle had never been seen, or seen only during the momentary incursions of Drusus and Germanicus,"† their language, their religion, their customs, their laws and their organizations. These were indigenous—homebred, without trace or tincture of the Roman law and institutions.‡ They borrowed nothing from antiquity or from surrounding peoples. They founded, and in the course of centuries their successors and descendants—the people of England,—built up their institutions on their own model. MACAULAY speaks of this with his accustomed vividness: "The foundations of our Constitution" he says, "were laid by men who knew nothing of the Greeks, but that they had denied the orthodox procession and cheated the Crusaders; and nothing of Rome but that the Pope lived there. Those who followed contented themselves with improving on the original plan. They found models at home; and therefore they did not look for them abroad."§ In words, well known, the author of the *Spirit of the Laws*, referring to the checks and balances of the English Constitution says: "This beautiful system has been found in the forests of Germany." (*Ce beau système a été trouvé dans les bois.*)||

* *Hist. Civ. Europe*, Lect. II.

† Freeman, *Norman Conquest*, Chap. i.

‡ Digby, 11, 12.

§ *Essay on History*.

|| Montesquieu, Book XI. Chap. VI.

This love of personal freedom and independence was impressed upon the institutions, they founded or adopted or modified. Learned investigators differ concerning the extent to which Roman law existed and prevailed at the time of the Saxon conquest, and the extent to which it was adopted or incorporated into the English laws, usages and institutions. But there is an universal assent to these propositions, viz.: that the Saxon spirit of freedom was embodied in the various local courts; that it was in these popular tribunals that the principles of law and local government were cultivated and disseminated; that the Saxons breathed into the English Government and institutions "a spirit of equity and freedom which has never entirely departed from them,"* and that in the course of time the Common Law intertwined its roots and fibres inseparably into the Constitution, polity, local and municipal institutions, the civil and criminal jurisprudence, the family relation, and the rights of person and of property. So from an immemorial or early period, the local territorial subdivisions of England, such as towns and parishes, enjoyed a degree of freedom and were permitted to assess upon themselves their local taxes and manage their local affairs. The rate-payers were thus dignified by being an integral part of the communal life: the foundations of municipal liberty were laid: political power was decentralized: knowledge of the laws and reverence for and obedience to them were constantly taught by a participation in their administration and enforcement. This is exactly the opposite of the systems prevailing on the Continent, where the central power absorbs, governs, regulates everything, thereby destroying municipal freedom and the capacity to enjoy and exercise it, as well as the power to defend and preserve it.

* *Mackintosh: Hist. Eng. Vol. 5, Chap. 1; Reeves: Hist. Com. Law: Introduction by Foulson.*

IN THIS COUNTRY, THIS SYSTEM OF DECENTRALIZING POLITICAL POWER, and of entrusting the direction of local affairs to the local constituencies, has from the earliest colonial periods been carried to a much greater extent than in England. As you pass from one end of this country to the other, alike in the older regions and in the newest organized settlement, you will see the affairs of each road-district, school-district, township, county, town and city locally self-managed, including the administration of local justice. Every township in the United States has a local court with power to summon a jury of the vicinage, thereby bringing justice home to the business and bosoms of the people, and making it their own affair. We are somewhat apt to look with disdain upon the courts held by Justices of the Peace. But in reality, we have few more useful institutions. The eyes of the ordinary justice have not, indeed, been couched to the "gladsome light of jurisprudence." He may be prone to make technical mistakes, but in general, he manages by himself or the jury to work out substantial justice, in the decision of the disputes arising out of the every-day affairs of the people. It is in no slight degree instructive to trace the institutions of this new country back to the germs of the Saxon or Anglo Saxon polity, for when we touch to-day, even in our frontier settlements, the electric chain wherewith Providence hath bound the ages and the generations of men together, we discover that we are in historic communion with rude and remote ancestors although separated from us by seas, mountains, and centuries.

THE STATES OF THIS COUNTRY bind together the congeries of local institutions, which they create severally and regulate independent of Federal control; thus happily preventing a

concentration at the National center of the governmental power and duty of legislating for and regulating the affairs of local communities throughout a country of such extent, that with its exact situation, wants, and interests, it would be impossible for Congress to become accurately acquainted.

So, in the ascending scale, THE FEDERAL CONSTITUTION constitutes the States and the people of all the States into a National Government. It defines the relations of the States to each other and to the General Government, and limits the power of the States under any pretext to deprive any citizen, however humble, of the great, primordial rights of freedom and equality before the law.

MAGNA CHARTA remains to-day one of the main foundations of English liberty.* Its chief glory is the provision "that no freeman shall be imprisoned or diseized of his freehold, but by the lawful judgment of his peers or the law of the land." This provision, memorable in its origin, historic in its associations, luminous with the light of universal justice, beneficent in its effects, and long ago embodied in all of the State Constitutions, has been recently carried into the Federal Constitution, thereby placing the rights of life, liberty and property, as against invasion by the States, under the protection of the National authority. The ancient lawgivers to induce the highest possible veneration and esteem for the laws, taught that they came from heaven and were sacred. If any human work ought to be regarded with sanctity by us, it is the *Constitution of the United States*. Unmatched and matchless instrument; source and guaranty of National life, of general prosperity and

* "The whole of the constitutional history of England is little more than a commentary on MAGNA CHARTA." (Stubbs' *Const. Hist.* Vol. I. Chap. XII.) MAGNA CHARTA "is the keystone of English liberty." (Hallam, *Middle Ages*, Vol. II. Chap. VIII.)

of countless blessings—making the States and the People one great, free, happy, UNITED NATION.

IF THE SUPREME COURT during the period of active national development covered by the long official career of CHIEF JUSTICE MARSHALL had put a narrow and inelastic construction upon the Federal Constitution, so that it could not have expanded with the growth and answered the necessities of a great people, it would have been calamitous to an extent no words can portray, and no imagination can conceive.

MARSHALL'S JUDGMENTS upon the National Constitution are among the most original and massive works of the human reason. They are almost as important as the texts of the Constitution which they expound. Some of them were, indeed, criticised at the time; but they have immovably established themselves as right in the general judgment of lawyers, public men and the people. Although changes in political parties have been reflected in the *personnel* of the Bench; although unforeseen crises in the national life have been reached and passed, it is remarkable that on not one of his many judgments has been written the word "over-ruled," and equally remarkable that no existing political party proclaims or holds tenets or doctrines inconsistent with the principles on which those judgments rest. They have become primal lights, shining with the steadfast and silent fidelity of the North Star or the Southern Cross, for the guidance of the inquirer after American Constitutional Law.

For nearly fifty years after his death, the Nation failed to show in any overt manner an adequate appreciation of the simplicity, worth, and dignity of his character, and of his extraordinary and unequalled judicial fitness and

qualities; at all events it failed to display any public memorial of gratitude for those labors which not only so greatly contributed to make the Supreme Bench so illustrious, but which enabled the country to attain unto its present stature without any strain upon the Constitution. The Bar and the Nation have at length, though tardily and since our last meeting, shown themselves worthy of the inheritance of such a name and of such labors, by erecting his statue, executed by the gifted son of his loved and eminent Associate, to the end that the Chief Executive, the legislator, the suitor, the lawyer, the judge, and the citizen, may in all coming time, as they go to or return from the Capitol, be reminded of the thoughtful features, the calm majesty, the placid courage, the lofty character, the inestimable public services of him whose uncontested and unenvied title is that of the GREAT CHIEF JUSTICE.

CONSONANT with the popular character of our institutions are the GRAND AND PETIT JURY. They are expressions of the free and practical spirit of the Common Law. They have a value, a deep value, too often overlooked, beyond the specific functions they exercise. The jurors acquire and disseminate a knowledge of the laws among the local communities from which they come, and to which they return. We ought doubtless to reform the abuses of administration in the jury system. But the complaints against the system, so far as well grounded, arise largely from inexperienced or incapable judges, or from unwise statutes curtailing the powers of the Judge in jury trials to those of a mere Moderator. I have given to this subject some observation and reflection, the results whereof I have elsewhere expressed. I will not here repeat them further than to re-affirm that in my judgment, *the JURY is both a valuable and an essential part*

of our judicial and political system. It is not simply to be venerated as a reminiscence, but prized for its usefulness. Its roots strike deep into the soil and cling to the very foundation stones of our jurisprudence. The system belongs to free institutions and tends to fortify and perpetuate them. I quite agree with CHIEF JUSTICE TANEY, than whom few judges have had wider experience and none, perhaps, have been more capable of forming a sound and unimpassioned judgment. / He has left on record his deliberate opinion that our Liberties are closely bound up with the preservation of the JURY.* I protest against the *Continentalization* of our law. I invoke the conservative judgment of the Profession against the iconoclast who in the name of Reform comes to destroy the jury: against the rash surgery which holds not a cautery to cure, but a knife to amputate and excise.

It is no part of my purpose to institute a COMPARISON BETWEEN THE CIVIL AND THE COMMON LAW, the one, or the other of which, constitutes the foundation of the jurisprudence of every civilized Christian state. It is undoubtedly true that abstractly considered in its entirety as a mere system of jurisprudence, the civil law, elaborated and matured by Rome in the height of her civilization was, until less than a century ago, superior to the common law, whose foundations were laid in the twilight of the Nation, and which had not kept pace in growth with the development and progress of the English people. The feudal system in its day made serfs of the masses. It was a system in its nature at war with commerce. It was inimical to peaceful pursuits. Out of its legie sprang the most baleful doctrine that has blighted the English law—the doctrine of tenure. To gratify ancestral

*Tyler's *Life of Taney*.

pride and maintain family splendor, the feudal aristocracy tied up the landed property in the iron fetters of tenure; and although it constituted the wealth of the nation, it was withdrawn from commerce and could not serve as a basis of credit. The feudal system is the source of the land-laws of Great Britain, which still press with such crushing weight upon the agricultural and industrial classes. What singular phenomena we frequently witness as the results of opposing forces. For example: Feudalism as a military system was logically compelled to ignore the rights of woman. She could not render military service. Upon marriage her legal identity was lost—*merged* in that of her husband; and the old common law pressed this fiction inexorably to all its logical consequences,—consequences which so often shocked the moral sense as to lead the Court of Chancery timidly to take the wife partially under its benign protection. At the same time, it is curious to observe that it was feudalism in its effects upon the domestic life and manners in the castle, that gave to woman, to the wife and mother, an importance they never had before, and have never since lost. Having done its work, feudalism is happily gone, but its choicest flower, the elevation, companionship and recognized dignity of woman still lives and its fragrance yet fills the air; and her legal rehabilitation is the work of our own times.

But with the growth of commerce, the world's great civilizer; with the advancement and elevation of the people and their constant progress towards liberty; with the establishment and growth of the principles of Equity under the great HARDWICKE and a long succession of illustrious Equity judges; with the disappearance from the law courts of the refinements, subtilities and artificial logic of the schoolmen, which so long poisoned the common law; and taking LAW and EQUITY as constituting together one single

connected system of Jurisprudence as that system exists at this time in Great Britain and in America, it is, I think, with all of its defects, the most splendid system of enlightened and practical justice, as applied to the affairs of mankind, that the world has ever witnessed.

THE ROMAN LAW on the revival of learning conquered the nations of continental Europe. But the English people sturdily resisted it, and as a system it obtained no foothold on English soil. Many of its enlightened and useful principles have been introduced into and have thereby enriched the English law, but the COMMON LAW has always maintained itself intact as a competing, distinctive system. It must be confessed that it lacks the artistic symmetry of its great rival; but it was better adapted to the institutions and character of the English people *and was for them at least, as it is for us, the better system.*

It is NOT a speculative system. It has not been excogitated by *doctrinaires* and built up from without, as a work of art. Its merit is that it is based upon the long experience of mankind; has grown out of real transactions, actually litigated and recorded. The principles of a judicial judgment, settled and announced after the argument of counsel, limited to the *precise state of facts* which the particular case presented, added that much, but only that much, to the existing mass of legal principles. The value of our system of law as we now have it is that it embodies the wisdom of time and long experience. "*Everybody is wiser than anybody*" said TALLEYRAND, and truly; and it is this general, accumulated wisdom that has been carried into our law.

LORD HALE in his short Tract on the "*Amendment and Alteration of Laws.*" every word of which is golden, three times declares that "*Time is the wisest thing under heaven,*"

and that "time and long experience is much more ingenious, subtle, and judicious than all the wisest and acutest wits co-existing in the world, can be." *

THE MOST DISTINCTIVE FEATURE of the Common Law of England and America is the RULE OF JUDICIAL PRECEDENT, or the binding force of adjudged cases as rules of decision for like causes. In no other system of jurisprudence is such force given to judicial judgments. The result is that elsewhere than in Great Britain and America, the judicial reports are few since judicial judgments have no authority, and no higher rank than the expositions or commentaries of private writers. The corresponding result is that in 1881 the judicial reports in England numbered 2,944 volumes,

* "It is most certain," says Lord Chief Justice HALE, "that time and long experience is much more ingenious, subtle and judicious, than all the wisest and acutest wits, co-existing in the world, can be. It discovers such varieties of emergencies and cares, and such inconvenience in things, that no man would otherwise have imagined. And on the other side, in everything that is new, at least in most things, especially relating to laws, there are thousands of new occurrences and entanglements, and coincidences and complications, that would not possibly be at first foreseen. And the reason is apparent; because laws concern such multitudes, and those of various dispositions, passions, wits, interests, concerns, that it is not possible for any human foresight to discover at once, or to provide expedients against, in the first constitution of a law, . . . so that in truth ancient laws, especially that have a common concern, are not the issues of the prudence of this or that council or senate, but they are the productions of the various experiences of the wisest thing in the inferior world; to wit, time, which as it discovers day after day new inconveniences, so it doth successively apply new remedies; and indeed, is a kind of aggregation of the discoveries, results and applications of ages and events; so that it is a great adventure to go about to alter it, without very great necessity, and under the greatest demonstration of safety and convenience imaginable." (Hargrave's Law Tracts.)

and in this country 3,000, and they are increasing at the rate of over 100 volumes a year.

WHERE IS THIS MULTIPLICATION OF REPORTS TO END? Is it to go on unchecked indefinitely? Is it desirable or practicable to check it? How far is it an evil, and what is the remedy? These, Mr. President, are inquiries of such pressing and serious moment that they may well engage the attention of the Association.

I suppose it to be undisputed that up to this time the Law Reports cannot be regarded otherwise than as an inestimable possession. Even BENTHAM, the bitter opponent of what he derisively styles "judge-made law," and advocate of that to which he gave the name of "CODIFICATION," declared of the "Report Books" (which in *Benthamese* stands for Law Reports) that the "greatest quantity of wealth possessed in this shape by any other nation is penury in comparison of that which has been furnished by the English common law. In this point of view (as a rich storehouse of materials for legislation; such a storehouse, that without it no tolerably adequate system of laws could be made) *it is a blessing even now*. As a light to the legislator, to assist him in making real law (that is statute law), it is a matchless blessing; but this sham law (that is, judge-made law) as a substitute to real law, is a curse. Time was when for want of recorded experience, the pen of the legislator could find no tolerably adequate indications for guidance. Time was—but that time is now, at least, at an end."*

TO THE SUBJECT OF CODIFICATION I will presently make a brief reference; but since it is clear that down to the

* Letter IV. of "*Jeremy Bentham, an Englishman, to the Citizens of the several American United States*" on the *Codification of the law*, 1817.

present the Law Reports are such invaluable repositories of legal principles, the inquiry I wish now to propound, is, *whether they have lived out the period of their usefulness*, that is, whether their continued publication is a benefit or an evil. Undoubtedly it were better that many of the volumes of reports of inferior or over-worked courts had never appeared. Undoubtedly the weighty advice of old BRISTRODE, so quaintly expressed in the dedication of his second volume, in the time of the Commonwealth, over two hundred years ago, has been too often disregarded: "That as the laws are the anchor of the Republic, so the Judicial Reports are as anchors of the laws, and therefore *ought to be well weighed before put out*." Undoubtedly it is to be regretted that so many cases have been, and that so many cases continue to be reported and published that contain nothing new or valuable.

But the inquiry is, Have we reached a stage in the history and development of our law when it is desirable that the doctrine of *stare decisis* shall cease? that no more Law Reports shall be put out? that should they be superseded by extracting from them all that is valuable and transmuting it into statutable form? It does not appear to me that the general answer to these several inquiries is difficult. The law as a result of the ever occurring changes in the condition of business and society, and of legislation, is constantly changing. How are these changes authoritatively to be ascertained and authenticated? The old is to a great extent so well settled and known as to have become elementary and indisputable. It is the new that is unknown and needs interpretation and definition. And as between the old reports and the new, the experience of every lawyer and judge is, I think, that the new are the most useful because the most needed; and while this is felt to be so, the publication of Reports of Adjudged Cases will continue.

THE INQUIRY, HOWEVER, RECURS, Is this to go on forever? If not, when and how is it to end? Will it break down under its own ever-increasing and insupportable weight, and end in eliminating the doctrine of Judicial Precedent from our law, and substituting the continental system? or will it have its end in superseding the Law Reports by CODIFICATION? or will it have some other issue?

We have two great divisions of law—statute-law and case-law. The statutes are frequently fragmentary, “cross and intricate,” superimposed one upon another. Case-law has to be sought in almost numberless reports and often among conflicting decisions. OUR LAW IS THUS FAIRLY OPEN TO THE THREE-FOLD OBJECTION OF WANT OF CERTAINTY, WANT OF PUBLICITY, AND WANT OF CONVENIENCE.* Its existing condition urgently calls for some

* AMOS (*Science of Law*, Chap. 13), classifies “the exact evils” to be provided against under four headings, which may be summarized:

1. Actual uncertainty, owing to the multiplicity and conflict of decisions.
2. Waste of labor in the process of ascertaining the state of the law.
3. Want of publicity, preventing knowledge of the law by the community or laity.
4. Want of knowledge, or the difficulty of acquiring such knowledge, on the part of the legislator, thus hampering him in his efforts to amend it.

It seems to me that the mischiefs which call for remedy are the three I have mentioned above, namely:

1. *Want of certainty*, that is, the existence of unnecessary uncertainty, arising mainly out of the partial and irregular development of case-law and conflicting decisions and piecemeal and desultory legislation.
2. *Want of publicity*, arising out of having to acquire a knowledge of the law by a resort to so many volumes of reports, thus necessarily confining a knowledge of even its leading principles to the profession of the law.
3. *Want of convenience, or voluminousness*, caused by the vast number and multiplication of Reports and Statutes.

Of these, the first and third are the more important; but the second

remedy, if any practicable and expedient remedy exists. The lawyer in an important case does not feel that he has discharged his full duty if he has not made a thorough examination of the multitudinous mass of decisions and put the result upon his brief. The community, which is conclusively supposed to know the law and required to obey it, does not attempt to acquire or affect to possess such knowledge. TENNYSON's well-known picture borrows nothing from poetic coloring, but is severely drawn with the sober pencil of a judge.

"The lawless science of our law,
The codeless myriad of precedent,
That wilderness of single instances,
Through which a few, by wit or fortune led,
May beat a pathway out to wealth and fame."

Our condition is worse than the condition in England, since we have thirty-eight state courts of last resort, and no superior tribunal to harmonize conflicting decisions, except in the comparatively small number of cases involving federal law.

Still the inquiry comes back, What is the remedy? "Is there no balm in Gilead? Is there no physician there?" Still the question presses, Where or in what is all this to end?

WHEN WE CONSIDER HOW PURBLIND are the wisest and most sagacious in dealing with the future, I venture a forecast, and the reasons therefor, with unaffected distrust.

is by no means unimportant, especially in a Nation where suffrage is universal. I have known more than one instance of the results of the toil of years being swept away because men in business did not know the elementary principles of the law of negotiable paper.

1. Our laws will, I believe, even if Codification be not adopted, become relatively more and more embodied in legislative form.

The greater certainty and convenience of a carefully considered enactment over the chaotic and unmethodized condition of the law when it has to be sought through volumes of reports and a variety of statutes, will constantly operate with no inconsiderable force in expanding the scope of legislative action; and this although codification, in the sense usually attached to the term, be not undertaken. This tendency is specially observable in modern English legislation, and one cannot fail to perceive in the modern English Reports, how much greater than formerly is the proportion of causes that turn upon statutory enactments. Every statute carefully thought out and fully covering an important subject is, in one sense, codification; at all events it is *pro tanto* a remedy for the unsatisfactory condition of the law on that subject existing when the statute was enacted. In this silent, unperceived way, the English bar and people are being educated *up to* and gradually prepared for codification in some practicable, expedient form.

But ought the legislative action to be so expanded as to embrace CODIFICATION within its remedial endeavors? Well what is Codification? The term is used in such a variety of senses that it must be defined before the question, "*whether Codification is an expedient remedy?*" can be answered.

BY ONE CLASS OF CODE ADVOCATES, it is insisted that the essential idea of a code is a complete statement of the whole law of the land including both statute law and case law. In their view the principles of true codification must assume that the law in its leading departments has practically attained its growth; that its principles are settled; that these can be and ought to be expressed in precise and logi-

cal form, without any necessary reference to old language and conceptions or titles; that it is feasible to do this so as to cover the *whole* field of general law, to the end of superseding the prior Statutes and the Law Reports; and that any lesser attempt argues an inadequate appreciation of the mischief and of the needful remedy. To me it has always seemed, I will not say chimerical, but inexpedient to attempt a scheme so ambitious as the embodying into a code or statutory form rules applicable to all the complicated transactions of modern business and society, with a view wholly to supersede the Reports.

The comprehensive scheme above outlined seems to have been BENTHAM's idea of a Code. What is more visionary than the legal millenium he pictured to his fancy? "Every man his own lawyer! Behold in this," he exclaimed, "the point to aim at." BENTHAM never argued or tried a cause. His independent and vigorous intellect lacked the true legal wisdom that can only come from living contact with the law at the bar or on the bench. He had all the elements of a Reformer—enthusiastic, fierce, destructive. He is an unique, statuesque, eccentric figure in the English law. His sensitive nature personally unfitted him for the practice of his profession. But as we read his bitter, bold, sweeping denunciations of the evils in government and the law as he saw them, we seem to behold in him an ancient Prophet with flowing robe and beard, coming with a new message to an unheeding world. His assaults were not wholly without effect, and they brought about at length some useful emendations in the law. "Nobody has been so much plundered as BENTHAM," said some one to TALLEYRAND, who replied, "True, but how rich he still is." The world is yet troubled over his ideas as to the rationale and true purpose of that to which he gave the name of Codification; and it is not impossible that a more remote age may accept as sound in

principle what to most of us still seems to be his extravagant notions on this subject.

He believed it was possible to extract from the Reports all that was valuable in them; nay that this ought to be done and done speedily and embodied in a Code, whereupon he would have been willing, I fancy, to have burned the Law Reports, and himself to have applied the torch. Unfortunately there is no alchemy by which the value of the Law Reports can *all* be extracted and transmuted into statutory coin.

There are, I think, few advocates of Codification who share in BENTHAM's extreme views; but there are many who believe, myself among them, that far less radical scheme—one more suited “to human nature's daily food,” is not only feasible but desirable, viz.: a thorough revision and systematic statement not of the *whole* law, but as far as it can be expediently done, of the law on the great subjects which relate to the ordinary business and life of the people; deducing and stating what is clear; removing what is archaic and obsolete; settling what is doubtful or obscure, never losing sight of the old landmarks, sailing ever close to the shore, using whenever they will best answer the purpose, old conceptions, language and methods of classification, and making no changes in substantive law, except where it is demonstrably clear that change is improvement.

CODIFICATION WITHIN THESE CONSERVATIVE LIMITS, has many advocates in England and in this country among lawyers and judges of ability and wide experience.

Of the opponents of codification of the unwritten law in any form, some deny its *practicability* and some its *expediency*. Its *practicability* proceeds, in part, upon the truth so clearly expressed by Lord MANSFIELD that “the Law does not consist of particular cases, but of general principles, which are illustrated and explained by those cases.” *

* *Rex vs. Bembridge*, 3 Dougl. 332.

The number of the cases is legion ; but the principles they establish are comparatively few, capable, of course, of being thoroughly mastered, and capable also of direct and intelligible statement. The objection to the *expediency* of such a performance, assuming the work to be thoroughly done by the ablest and fittest men in the profession, is that the freedom of growth of the unwritten law will thereby be arrested, and the inelasticity and imperativeness of the codified rule will work injustice, since the courts will be required to apply it in cases in which the facts and circumstances would take it out of the rule if the rule had not been cast in an inflexible statutory mould.

There is some plausibility, but on the assumption that the work of Codification is done in the spirit and manner I have indicated, there is little real force in the objections. In my view the codifier ought not to generalize any principle so that it could fairly apply to any other than the class of cases specially defined, and for which it was intended, to the end that the codified rule shall, unless purposely changed, be simply co-extensive with the settled uncoded rule, which the courts have no more power to change or to refuse to apply in the *uncodified*, than in the *codified*, state. If cases shall arise not within the rule, and not expressly provided for, they will be determined in the same manner as if no code existed. If mistakes shall be made, they can be speedily remedied by the legislature, which meets annually or bi-annually in all the states ; and by a standing provision for frequent legislative revision. A rule could also be enacted that the Code should be construed as a Code of the Common Law of the State, and not strictly, like statutes in derogation of the common law.

A more extended and radical scheme of codification than the one I have outlined, is, I admit, theoretically possible, and perhaps, desirable, whenever the work can be thoroughly

done. Codification in some form, will, I feel sure, be accomplished at no very distant day in Great Britain, and then, if not before, our States will undoubtedly adopt the result with necessary changes.

IN THE LAW OF PROCEDURE, we have heretofore led the way, under an able and eminent lawyer of this State (Mr. DAVID DUDLEY FIELD,) in a great reform which has spread not only over our own land, but has crossed the two oceans, and lies at the basis of the recent and existing Judicature Act of Great Britain. Fortunate man! to have had his days graciously prolonged so much beyond the common span, that he might witness the ecumenical triumph of the ideas of his earlier, but not more enthusiastic, days.

It ought to gratify a laudable national and professional pride if we could, in like manner, lead the way to a reform equally needed, and within the limits indicated, equally practicable, in the SUBSTANTATIVE LAW common to both nations. I recall here Mr. WEBSTER's remarks in his finished eulogy on Mr. Justice STORY: "There is no purer pride of country than that in which we may indulge when we see America paying back the great debt of civilization, learning, and science to Europe; and in the august reckoning and accounting between nations, returning light for light, and mind for mind. Acknowledging, as we all acknowledge, our obligations to the original sources of English Law, as well as of civil liberty, we have seen in our generation copious and salutary streams, *turning and running backward*, replenishing their original fountains, and giving a fresher and brighter green to the fields of English Jurisprudence."

2. In course of time, each State will have, as the result of permanent statutes and the lengthened line of its own judicial

decisions, a jurisprudence of its own so ample, that the necessity for going beyond it will arise only in the novel and exceptional cases, which will justify and reward the labor.

3. As the common law, happily, underlies substantially our whole jurisprudence, thereby giving it a general uniformity of character; as the labor of examining the multitude of reports becomes more and more onerous to the busy practitioner or the equally busy judge; and as the character for learning and ability of many of the benches of shifting judges, is not such as to invest their judgments and decisions with special value, the combined result will be a tendency more and more to diminish the importance of the "case lawyer" and to make felt the importance of a knowledge of the great, living, fundamental *principles* of our law and equity systems, and to argue and decide causes with greater reliance upon these principles. We have happily reached at length, in law as in literature, the salutary stage, when, in the language of Dr. JOHNSON, "*no precedents can justify absurdity.*" *

As, therefore, we must expect that ADJUDGED CASES WILL CONTINUE TO BE REPORTED, and continue as heretofore to be used as authority, and to serve as sources or evidence of legal principles, we are deeply concerned in whatever favorably or injuriously affects the value of the Reports.

THE CHARACTER OF MANY RECENT REPORTS HAS DETERIORATED FROM SEVERAL CAUSES. To two of these, I will now allude because they arise from mistaken views and practices of the Judges themselves, and are, therefore, readily remediable.

*Life of Milton.

Most of our appellate courts are crowded with causes, and the effect of this upon the judges is that they too often feel it to be an ever pressing, paramount, all absorbing duty "*to clear the docket.*" This mistakenly becomes the chief object to be attained—the primary, instead of a quite subordinate, consideration. In the accomplishment of this end, the judges are as impatient of delay as was the wedding guest in the Rime of the Ancient Mariner. Added to this, a majority of the Appellate Judges generally reside elsewhere than at the capital or place where the courts are held, and the desire is constantly felt to bring a laborious session to an end as speedily as possible, in order that they may rejoin their families and do their work in the fatigue-dress of their libraries, rather than under the necessary restraints of the term. As a result, two practices have grown up, too generally throughout the country, which have, as I think, done more to impair the value of judicial judgments and opinions than perhaps all other causes combined.

THE FIRST IS *that the submission of causes upon printed briefs is favored and oral arguments at the bar are discouraged, and the time allowed therefor is usually inadequate.*

On this subject, I hold very strong opinions; but also hold that no opinion can be too strong. As a means of enabling the court to understand the exact case brought thither for its judgment; as a means of eliciting the very truth of the matter both of law and fact, there is no substitute for oral argument. None! I distrust the soundness of the decision of any court, of any case either novel or complex, which has been submitted *wholly* upon briefs. Speaking, if I may be allowed, from my own experience, I always felt a reasonable assurance in my own judgment when I had patiently heard all that opposing counsel could say to aid me; and a very diminished faith in any judgment given in a cause not orally argued. Mistakes, errors, fallacies and flaws elude

us, in spite of ourselves, unless the case is pounded and hammered at the bar. This mischievous substitute of printer's ink for face-to-face argument impoverishes our case-law at its very source, since it tends to prevent the growth of able lawyers who are developed only in the conflicts of the bar, and of great judges who can become great only by the aid of the bar that surrounds them. It was not thus until a quite recent period. Nor are these views at all novel. LORD COKE refers to the benefits of oral arguments in language the most solemn and impressive. In cases of difficulty he says: "No man alone with all his uttermost labors, nor all the actors in them, themselves by themselves out of a court of Justice, can attain unto a right decision; *nor in court without solemn argument where I am persuaded Almighty God openeth and enlargeth the understanding of those desirous of Justice and Right.*"

Formerly, whenever a new or difficult question arose, the judges of England invited argument and reargument, always in open court; and in the earlier days of the law, the matter was not only debated at the bar by the counsel for the parties, but was afterwards discussed by the Judges openly at a time prefixed in the presence of the barristers and apprentices: "a reverend and honorable proceeding in law, a grateful satisfaction to the parties, and a great instruction to the studious hearers." *

* "Whereunto in those cases that be *tortuosi* and of great difficulty, adjudged upon demurrer or resolved in open court, no one man alone with all his true and uttermost labors, nor all the actors in them, themselves by themselves out of a Court of Justice, nor in Court without solemn argument, where (I am persuaded, Almighty God openeth and enlargeth the understanding of those desirous of Justice and right) could ever have attained unto. For it is one, amongst others, of the great honors of the Common Laws, that cases of great difficulty are never adjudged or resolved *in tenebris* or *sub silentio suppressis rationibus*, but in open Court, and there upon solemn and elaborate arguments, first at

If, gentlemen, our case-law is not to go on deteriorating, we must revive the former appreciation of the value of oral arguments. It is these that must be favored, and it is the submission wholly on briefs that ought to be discouraged.

THE OTHER PRACTICE among some, I fear many, of our appellate courts which injuriously affects our case-law, is *the practice of assigning the record of causes submitted on printed arguments to one of the Judges to look into and write an opinion, without a PREVIOUS examination of the record and arguments by the judges in concert.*

This practice ought to be forbidden, peremptorily forbidden, by statute. What is the most difficult function of an appellate court? It is, after the record is fully opened and the argument understood, to determine precisely upon what point or points the judgment of the case ought to turn and rest. This most delicate and important of all judicial duties ought always to be performed by the judges in full conference *before* the record is delivered to one of their number to write the opinion of the court; which, when written, should be confined to the precise grounds thus predetermined. Both in respect to oral arguments and prior conferences, the Supreme Court of the United States is a model for every appellate tribunal in the country.

the bar by the counsel learned of either party (and if the case depend in the Court of Common Pleas, then by Sergeants at law only); and after by the Bench by the Judges, where they argue (the puisne Judge beginning and so ascending) *seriatim* upon certain days openly and purposely prefixed, declaring at large the authorities, reasons and causes of their judgments and resolutions, in every particular case (*habet enim nescio quid energiar viva vox*) a reverend and honorable proceeding in law, a grateful satisfaction to the parties, and a great instruction and direction to the attentive and studious hearers."—Sir Edward Coke's Preface to 9th Coke's Reports, page xiv.

WHEN THE IDEAL OF LEGAL EDUCATION shall be the mastery of principles, so that the first impulse of the lawyer will be to find the "principle" and not the "case" that governs the matter in hand: when arguments at the bar shall be mainly directed, *first* to an ascertainment of the peculiar and controlling facts of the case under consideration, and *then* to pointing out the principles of law which apply to this precise state of facts, each of which operations requires the disciplined exercise of intellectual qualities of a high order; when the Bench shall be constituted of the flower of the Bar, and appellate judgments shall not be given without a previous conference of the judges at which the grounds of the judgment shall be agreed upon before the record is assigned for the opinion to be written; when opinions shall be rigidly restricted, without unnecessary disquisition and essay-writing, to the precise points needful to the decision, we will have an abler bar, better judgments, and an improved jurisprudence, in which erroneous and conflicting decisions will be few, and reduced to the minimum.

AND HERE I MUST CLOSE. MY PURPOSE has been to show that our system of jurisprudence is consonant with the genius of our people and with our civil and political institutions; that it is an outgrowth of them, and powerfully supports and sustains them. It is, in its ground-work, the system that prevails wherever, in either continent, the English language is spoken. In our law libraries, we find the learning and labors of judges administering this system in Law Reports from India, South Africa, Australia, New Zealand, the Sandwich Islands, and the West Indies. All this is the heritage, by a species of *tenancy in common*, of the English and American lawyer, who wherever, within this wide

horizon, he finds his language spoken, finds also individual and civil liberty, popular institutions, the grand and petit jury, legislative assemblies, Magna Charta, Habeas Corpus, the same sacred regard for individual rights, the same reverential affection for, and instinctive obedience to LAW. What incalculable advantages! We have the same legal literature. We have the same legal firmament, in which we behold HALE and MARSHALL, HARDWICKE and STORY, BLACKSTONE and KENT, ERSKINE and WEBSTER. We partake mutually of the benefits of the labors of each other. Whoever achieves anything for the advancement or improvement of the law, achieves it not for his own country alone, but for all English-speaking and English-governed peoples.

MY FURTHER PURPOSE has been to show that although this system is not without serious defects, rather, however, of form than of substance, the remedy is not to substitute the principles of some alien system, but to engraft the needed amendments and changes on this hardy, native stock.

THE SPECIAL DUTY of the American lawyer is, of course, to improve and promote the jurisprudence of his own country. That we recognize this duty, the existence of this Association, of which this is the chief end, fully attests. What great and complex problems confront the American lawyer, growing out of our vast territorial extent, and our distinct Federal and State systems of government and jurisprudence; out of the changes wrought by iron, steam and electricity in business and all the modes of communication and transportation; out of the combinations of capital almost without limit in corporate form, affecting interests vital to individuals and to society. The law has to be adapted to these new situations and circumstances. What a weighty work. Truly it demands the most attentive study, the most penetrating observation, the

most sedate consideration, the ripest judgment. Here will be found work for us all. We have laid, as I have attempted to show, the foundations of a noble jurisprudence, and during the two centuries of our Colonial and National life, the structure has been carried along so as to meet contemporary wants and needs. The work must, however, go forward with the National progress. What more generous ambition can inspire, what higher duty can engage, the American lawyer than to assist, in his day, in advancing this structure, and adapting it, by alteration and enlargement, to the changed and changing conditions of society; a work which must ever go on, yet never be completed.

"Some unfinished window
In Aladdin's tower,
Unfinished must remain."

PAPER

READ BY

ANDREW ALLISON,

OF NASHVILLE, TENNESSEE.

*The Rise and Probable Decline of Private Corporations
in America.*

Biography is one of the most instructive and attractive of studies. There is a peculiar fascination in the history of the humblest life, although it may be plainly told. Existence itself, life, death may be real enough when applied to ourselves; but when we consider them in a former generation, they possess all of the charms of romance. And if the subject has achieved greatness, or played an important part in the history of his times, admiration of the character is added to the novelty of the subject: the obscure beginning, the struggle against adverse fortune, the final triumph, or the heroism in defeat—all these never fail to delight the fancy of youth, while they afford the most pleasing reflections of age. The history of the formation of ideas and principles; of the origin, growth, and development of social and political institutions, is even more inviting, for it is the history of whole generations of men; it presents, moreover, a still wider field for analytical inquiry and philosophical speculation.

I am to consider, necessarily with great brevity, the collective history of some of those institutions—those artificial beings, called corporations, created by the state for an in-

finite variety of temporal purposes; to inquire how they came here, how they have used or abused their opportunities, and what results they have accomplished; to consider in what way they have been connected with our great commercial, manufacturing, and industrial enterprises; how they have contributed to the necessities, conveniences, and luxuries of life; how they have been subject to popular caprice, to-day taken under the protection of the state, subsidized and granted peculiar and valuable privileges, and to-morrow bending under the ban of popular displeasure, threatened with confiscation and utter annihilation. Created by the people for their own purposes, their chronicle is but a chronicle of the times. As we know them, they are emphatically American institutions, necessities of modern life, just what we have made them; growing up under our customs and economics, moulded by our constitutional and statutory laws, our judicial decisions, and our public sentiment, to fill, from time to time, such places in our social, educational, and business lives as our progress has made desirable.

Private corporations had been a part of the common law of England long before the settlement of this continent. No doubt the theory was carried over with the body of the civil law by the Roman legions at the conquest of Britain. Blackstone attributes the origin of corporations to the Romans. Plutarch mentions that Numa Pompilius divided the Romans and Sabines into different corporations, in order to suppress the turbulence of contending tribes. But the Pandects seem to favor the idea that the Romans were indebted for them—as they were for so much, besides, that was excellent in art, letters, and jurisprudence—to the Greeks. It is probable, though, that what Plutarch terms “corporations,” were what we call “societies.” Afterwards the civil law brought the organization of corporations to

great symmetry; and no student of that system can fail to be attracted by the remarkable resemblance of their regulations to our own laws governing the same institutions, especially in those classes where a personal liability is imposed upon stockholders for the debts of the company. A few great trading monopolies had been created before we were known as a nation: such as the Russian Company in the reign of Edward VI, the Eastland Company in 1579, the East India Company in 1600, and the Hudson's Bay Company in 1670. But on the Continent peculiar privileges were always jealously bestowed upon any class of persons. In England, while they were given in exceptional instances to a few favorites of the crown, it has never been the policy to confer upon associations formed for purposes of trade, the full and unqualified privileges that are bestowed with us. In no other age or country have private corporations entered so extensively into the business of the country, never so thoroughly into the details of everyday life, as with us. When we walk through the exhumed cities of antiquity, and see about us so much to remind us of our own domestic life, we say sympathetically: How grand must have been your public baths, your libraries, your theatres, your market-places; how delightful the groves of your philosophers! But, poor unfortunates! You have never known the delight of being transported in palaces with the swiftness of the winds, of receiving messages across the ocean, hours, as it were, before they were sent, of speaking to friends hundreds of miles away, and hearing their familiar accents; all carried on by these artificial beings called corporations. Most of our important wants are supplied by them; we are educated by them; by means of insurance companies we are provided for by them in sickness, and after death our families are taken care of by them. Yours was the age of the strong hand, of the aggregation of power and the segregation of

wealth; ours is the age of aggregated capital, but of the segregation of power.

Many things conspired to retard the immediate growth of corporations among the early settlers of this country; they were poor, the Indian wars were frequent and destructive; and, above all, they were continually weighed down by the standing policy of the mother-country, to dwarf the commerce of all her colonies. Some had come hither for conscience sake, some were lured by the hope of plunder; but there was one sentiment common to all:—here was a whole continent in a state of nature, to be subdued, developed, peopled, governed. No fairer field was ever presented to the courage, industry, and genius of man. An almost interminable seaboard, extending from regions of thick-ribbed ice to a climate of perpetual summer; rivers of the greatest length and width—and lakes that looked like inland seas, afforded the widest scope for fisheries, navigation, commerce; the richest soil would reward the labor of the husbandman; the ores and wealth of the hills and mountains were inexhaustible. But how were these things to be made to contribute to the world's wealth and happiness? Individual means could not compass it, and the governments were as poor as the people; besides there was an intense opposition to everything that magnified the power of the state, and a proverbial jealousy of taxation. So the country went along as best it could until Washington returned his commission to Congress, and the states were independent. We are now prepared to hear that remarkable fact, that in the entire provincial period not one body politic of the character of which we speak, was created.

From that time up to the formation of the Federal Union affairs were too unsettled for corporate life: democracy had to establish its conservatism. From 1780 until the passage of the Judiciary Act of 1789, but one private corporation,

the Marine Society of the town of Salem, was created in Massachusetts; and that was the history of the other states.

The question arose in the Constitutional Convention of 1787, whether the Federal government should possess the power to grant charters of incorporation, or leave it to the states as one of their reserved powers. On the 18th of August, 1787, Mr. Madison submitted to the convention, to vest the power in Congress, the following propositions:

1. "To grant charters of incorporation generally.
2. "To grant charters of incorporation in cases where the public good may require them, and the authority of a single state may be incompetent."

They came up for discussion on the 14th of September, Mr. Madison suggesting that the second proposition be adopted as an enlargement of the power granted in Art. 1, Sec. 8, of the Constitution. He said the object was to secure an easy communication between the states. Mr. Randolph and Mr. Wilson supported it. Mr. King opposed it because he feared it would hazard the adoption of the constitution; New York and Philadelphia were rival cities, each would want the national bank. Mr. Mason opposed it because he was afraid of monopolies. The resolution failed by a vote of eight to three.* This action of the convention created afterwards great embarrassment in the courts, and much bitterness between political parties, especially in the contests over the United States Bank. In fact, corporations were so little known to this country that it knew not how to treat them. Sometimes the matters approached the humorous. The question is mooted before the Supreme Court of the United States, whether a corporation could make an express assumption unless specially authorized; and it is gravely decided that a corporation need not always act under its seal. And in 1807 we find the Supreme Judicial Court of Massachusetts,

* Madison Papers, p. 1354, 1576.

after the most elaborate arguments, solemnly determining that a corporation could not force an unwilling citizen to become one of its stockholders.* The Supreme Court of the United States, upon the question of jurisdiction over corporations, adhered for over thirty years to the rule, that they were substantially partnerships;† and it did not determine authoritatively until 1853, that all the stockholders, by a fiction of law, must be presumed to be citizens of the state granting the charter.‡

The policy of the government in its early days was committed to men of such eminent wisdom, foresight, and patriotism, that it at once gave assurance of becoming a great nation. A strong tide of immigration set in from Europe, and men's minds were soon turned to enterprises of considerable importance. Much, too, was to be done in a country at its commencement. A currency was to be established, public highways and other expensive works of internal improvements were to be built, colleges founded, ships and navies constructed, and all the avenues of commerce and business supplied with capital. The government could do but little in the accomplishment of these designs, and no individual wealth at that time could even inaugurate them. The work was commenced in earnest by corporations, assisted in many cases by the state and national governments. They were chartered with great liberality, and in a little while the small means of hundreds of individuals were united in the chief manufacturing and business ventures of the day. Controlling large means and possessing much influence, they sometimes became defiant. At that early period, 1807, the learned attorney-general of one

* *Ellis vs. Marshall*, 2 Mass. 269.

† *Bank of U. S. vs. Deveaux*, 5 Cranch, 61; *The Hope Ins. Co. vs. Boardman*, 5 Cranch, 57; *Bank of Vicksburg vs. Slocumb*, 14 Peters, 60.

‡ *Marshall vs. B. & O. R. R. Co.*, 16 How. 314.

of the greatest of the old states, in his argument before its highest judicial tribunal,—the like of which is sometimes heard in this generation,—admonished the court, that the power and effrontery of these monopolies were so boundless that they were corrupting all branches of the government, and the only hope of the country was in the integrity of the judiciary.*

The war of 1812 with England soon followed, interrupting business at home and abroad, and arresting the rapid increase of corporate bodies. The main cause of that war was the determination of the United States to maintain her rights upon the high seas, in obedience to the spirit of her rising young commerce. The brilliant victories of her sailors and soldiers gave our country a most favorable character abroad, especially among commercial nations; for they were persuaded that a people so prompt to resist an insult to their commercial honor, and so valiant in maintaining their cause, could but be just, enterprising, and magnanimous in times of peace.

The country was regaining its commercial importance, when the Supreme Court of the United States, at its February term, 1819, rendered one of the most memorable decisions in its history; it is not too much to say that it came by surprise to the court, the bar, the general public, and to corporations themselves. Of course, I refer to the Dartmouth College cause.† It affirmed that a charter was, in some respects, a contract which the grantor could not impair, and was under the protection of that clause of the Constitution of the United States which declares, that no state shall make any law impairing the obligations of contracts. The charter in that case was granted before the revolution by the British crown to the founder of a college;

* 2 Mass. 272.

† 4 Wheaton, 518.

and the impairment complained of consisted of an act of New Hampshire, which disturbed the number and appointment of the trustees, and the custody and administration of the funds of the corporation, without its consent. Many considered it a case of first impression; but Chief Justice Parsons, of Massachusetts, had announced the same decision thirteen years before, and it evoked no particular discussion. This most emphatic declaration of the interpreter of the Constitution by its great chief justice gave to the franchises of corporations values their owners never dreamed they possessed. It was at the same term, also, that the court delivered another decision, second in importance only to the above: that Congress could, under its implied power, charter a United States Bank.* These questions were carried into active politics. The charter of the United States Bank was about to expire; popular sentiment was against its renewal; however, President Jackson did not wait, but removed the deposits of the government from its bank. The necessities of the country demanded a larger volume of currency and greater facilities for banking. The states granted many imprudent charters for banking purposes. Trade increased, the paper currency expanded from \$110,000,000 in 1830 to \$225,000,000 in 1837. The domestic products of the country exported in 1824 amounted to \$50,000,000; in 1830 they had increased to \$107,000,000. The states of the Union doubled in number, and more than doubled in wealth and population. Manufacturing, mining, trading, banking, canal, turnpike, steamboat companies were developing the states and enriching their stockholders. The railroad companies soon followed. Speculation bewildered the soberest minds. The Old World caught the spirit of the New; even states and nations were not exempt. Vast works of internal improvements, under the control of

* *McCulloch vs. Maryland*, 4 Wheaton, 316.

private corporations, were inaugurated, the states either issuing or indorsing bonds, to a fabulous sum, to assist in their prosecution. The tide of prosperity carried everything before it along this new and easy current to wealth which had been discovered in the western hemisphere. The Bank of England first became alarmed. It feared for its own safety; it abridged the credit of the American banking houses in England; the latter called upon their home banks for specie; there was none in the country; the banks suspended, and the crisis of 1837 depressed the country. The productions of the states were so enormous, though, that business soon recovered from the immediate shock, and in a few years the railroad and canal construction, especially, had given a wonderful impetus to trade. It had caused to be issued, unfortunately, many millions of bonds, a great many the gifts or subscriptions of the states to the gigantic works of internal improvement. Again reverses came. A financial gloom overhung the nation, and Pennsylvania, Maryland, Mississippi, and other states found it impossible to meet promptly their obligations. Many affected to find the cause of these evils in the war upon the United States Bank, resulting in a mass of irredeemable currency from the state banks. On the other hand, some traced to the power and irresponsible impersonality of private corporations that reckless spirit of speculation which forced all kinds of prices to unnatural and unhealthful figures.

During all that period there continued, and there exists now, much dissatisfaction with the opinion of 1819. Notwithstanding the cause was elaborately argued, and was then taken under advisement during vacation; notwithstanding it was the judgment of a court of proverbial learning, vigor, independence, virtue, and true greatness, a judgment supported by three different concurring opin-

ions, with only one dissentient; notwithstanding the opinion of the court, as read by the chief justice, declared that the obligations of a contract by the state could not deprive it of exercising that sovereign right, its police power, whenever necessary for the public good,—it has not escaped severe and persistent criticism. It was said that the obligation clause of the Constitution was intended by the framers to apply alone to private contracts between individuals; that Mr. Webster had overcome his adversaries by his superior management, and had crushed them by his masterly abilities; that even local, personal, and political influences had been brought to bear upon the judges; and that the arbitrary will of the chief justice had borne down all opposition.

The chief justice passes away, together with many of his associates; a new chief justice and new associates, from other political parties, take their places; they bring with them new ideas, different views as to corporations, and many fear the old decisions will be swept away. Then commences that series of opinions which construe all grants in charters most strictly against the corporation—a doctrine which Chancellor Kent said he utterly abhorred. It was so distasteful to Judge Story that he threatened to resign his seat on the bench, and lamented that state sovereignty had been so exalted that he had no hope of ever seeing any law declared unconstitutional. The first decision was in the *Charles River Bridgecase*, at the January Term, 1837;* it determined that a statute empowering the erection and maintenance of a free bridge so near to a toll bridge, erected under a charter, as to deprive it practically of all tolls, was not a law impairing the obligations of a contract; and that a charter of incorporation must be construed most favorably towards the public and most strictly against the corporation. The opinion was read by Chief Justice Taney,

* *Charles River Bridge vs. Warren Bridge*, 11 Peters, 420.

Judge Story dissenting. The cause had been argued before Chief Justice Marshall, and it is said Judge Story expressed his views. Other decisions of like character followed: That a toll bridge, constructed under a charter, could be taken for other works of internal improvement upon the payment of compensation;* that, although a state can contract with a bridge company that no subsequent bridge shall be erected over the same river for a period of ninety-nine years, a railroad bridge is not a bridge within the contemplation of the parties.†

Then we have the lottery cases, holding that a grant to a private corporation to carry on a lottery for a number of years is nothing more than a license to enjoy the privilege conferred for the time, subject to future control;‡ the legislature having no authority to bind the people to any contract which affects their health or morals.§

Then we have the Granger cases. The Supreme Court determines that, in the absence of a limitation in the charter, a state may regulate, as to its domestic traffic, the charges of a common carrier for transportation.|| That is the extent, too, of the ruling in the Ruggles case.¶

But the determination of the courts to confine the principle of the college cause to its narrowest technical limits, was not the most serious check upon the power of corporations. It would have been wonderful if, in a popular government, the people had not resorted to the ballot for relief. Many expedients were adopted. In New York, the constitution of 1821 required a two-thirds vote of each

* *West River Bridge Co. vs. Dix*, 6 How. 507.

† *Bridge Proprietors vs. Hoboken Co.*, 1 Wall. 116.

‡ *Phalen vs. Virginia*, 8 How. 163.

§ *Boyd vs. Alabama*, 94 U. S. 645; *Stone vs. Mississippi*, 101 U. S. 814; *Butchers' Union Co. vs. Crescent City Co.*, 111 U. S. 746.

|| *Peck vs. R. R. Co.*, 94 U. S. 164.

¶ *Ruggles vs. Illinois*, 108 U. S. 526.

house to grant a charter; but in the next legislature thirty-nine new charters were granted, and it was found as easy to get the two-thirds as it had been to get a bare majority. The favorite mode of relief was for the state to reserve the right to alter, amend, or repeal the charter; this right being expressed often in the constitution, sometimes in a general statute, and frequently in the charter itself. Massachusetts, in 1809, adopting the suggestion of Chief Justice Parsons, reserved this power in an act incorporating manufacturing companies; and in 1830, a general statute to the same effect was passed. New York incorporated the same clause in her constitution of 1826, Wisconsin in 1848, California in 1849. But many states still hesitated, and those that were most undeveloped, and had the greatest need for corporations, hesitated longest. From 1840 to 1860 these reserved powers were appropriately modified or neutralized, as public policy demanded costly works of internal improvement to be undertaken by private corporations; they were given total or partial exemption from taxation, fixed remunerative tariffs for transportation, subscriptions of large sums to the capital stock by the states, or endorsements by the states of the bonds of the companies. The times are marked by the most radical vacillation in the policy of the states, sweeping from one extreme to the other, as one political party gave way to another.

The scope of this reserved right has been defined by the Supreme Court of the United States: The amendment must be made in good faith; under its guise, oppression must not be inflicted. The power has its limits, and it cannot be used to take property already acquired under the operation of the charter, or to deprive the corporation of the fruits of contracts lawfully made and actually reduced to possession.* The case of the greatest hardship, though, was that

* *Shields vs. Ohio*, 95 U. S. 319; *Sinking Fund Cases*, 99 U. S. 700.

of the Spring Valley Water Company, determined at the last term of that court.* That corporation had expended vast sums of money to collect artificially in the mountains, and to convey to the city of San Francisco, a supply of pure water for the city and its inhabitants. The charter provided that the water rates should be fixed by a board of disinterested appraisers. Under this reserved power, the people of California, by amendment to her constitution, changed the mode of valuation, leaving the entire matter to the city officials, the city itself being the largest consumer of water. The court announced that the amendment was clearly authorized under the reservation stated. The court however, expressly reserves the questions, What would be the result if the municipal government does not exercise an honest judgment, or if it fixes upon a price manifestly unreasonable?

Here, then, this great court leaves us. There is much yet of uncertainty and apprehension. But the sceptre of 1819 has been broken by popular sentiment, the supremest power at last in a government of universal suffrage. That sentiment, we have seen, operates alike upon courts and legislatures. It must be a most delightful gratification, though, to every American lawyer, to look back over our juridical history, and see the opinion of the great chief justice survive the overthrow of parties, and the varying policies of men, of the states, and of the nation; affirmed times without number, through two generations of men, by his successors, who have been drawn from various political associations. There is not an opinion, from Wheaton to Davis, wherein the question of the contract rights under charters is involved, which does not declare that the principle announced is but the spirit of the original college decision. That court uniformly announces, whenever pertinent, that

* Spring Valley Water Works vs. Schottler, 110 U. S. 348.

the principle of the Dartmouth College cause has been so long embedded in the jurisprudence of the country, that it is to all intents and purposes a part of the Constitution itself, and it is now too late to contest its correctness. It has upheld the contract by the state in a charter, limiting its right to taxation. And in all the cases the court says, the question is not whether the state is bound by its contract, but whether there *is* a contract.

It would be impossible to foretell what will be the effect of the opinion in the San Francisco case. We know, though, the result of the decision in the Granger cases upon Wisconsin and her seven sister states. The corporations stood still; railroad construction declined from 3,086 miles in those states in 1872 to 550 in 1876. The obnoxious laws were then removed or modified, and railroad construction rebounded to 2,915 miles in 1880. In Tennessee, this reservation first appeared in a permanent form in her constitution of 1870; since then, a period of fourteen years, and in the midst of great general prosperity, about one hundred charters have been issued to railroad companies, under which some 325 miles of track have been constructed; in other words, an average of some three and one-quarter miles of road to each company, generally narrow guage roads running to coal mines or iron works. As to banks, insurance companies, and the great variety of corporations which we find so indispensable in the ordinary affairs of life, their outlay for equipment is merely nominal, and the repeal, or alteration of their charters, would not be destructive of everything. But if the worst fears of capitalists are realized in the future opinions of the highest court of the nation, the telegraph, telephone, railroad, gas, water, canal companies, having their entire capital invested in their equipments, will hold their property subject to the will of the people. The breath that made them may blow them

away. But take the San Francisco case, as it stands adjudicated. Could there be found capital anywhere now sufficient to construct water works valued at \$15,000,000, the corporation to fix its own rates, if there was present this reservation, by which afterwards the legislature could have the rates fixed by the city officials, who would be undoubtedly elected by the people upon the express pledge that they would give cheap water rates to their constituents? Certainly not, unless there was an immense margin for possible profits. There is no stability in the investment; and the want of that is what speculation feeds upon. Investors, therefore, have those terrible calamities hanging over them; and we see the failure of a broker's office in New York carry down a bank in Indiana, affect the price of sugar in New Orleans, and depress the value of town lots in Memphis. When vast interests are to be determined by a town meeting or a popular election, well may we say we know not what to expect. We have not quite forgotten how the Italian Court of Cassation lately shocked the moral sense of all law-respecting communities, by a decision which upheld an act of the Italian legislature, practically confiscating to the use of the government the private property of a religious society. Nor can we soon forget how hard it was for us to reconcile ourselves to the recent opinion of the Supreme Court of the United States, declaring valid an act of the Parliament of the Dominion of Canada, releasing the lien of the mortgagees of a railroad, and substituting new securities for the bonds.* The principle was that the legislature is omnipotent. There is but a step to that omnipotence with us, from the point to which this reserved power of repeal has led us.

I have no doubt that Chief Justice Marshall would have rendered the same opinion in the San Francisco case. I have the most supreme confidence in the entire correctness

* *Canada So. Ry. Co. vs. Gebhard*, 109 U. S. 527.

of both that and the college decision. I am also thoroughly satisfied that the practical effect of each is deplorable. It is pitiable to behold a sovereign state so bound up by a contract that she cannot protect the interests of her citizens, fluctuating, as they do, from generation to generation. It is just as pitiable to see a great public enterprise subject to be destroyed at any time by national error or caprice. Let there be a contract between the state and the corporation; but let it be one in which neither is at the mercy of the other. Like a contract between individuals, it should be fair, just, and honorable in all its parts. Let the state reserve the power of altering the charter, but in such manner only as not to reduce the net earnings below such a stated per centum as the state and the investors shall have agreed upon beforehand, as being a fair annual return upon the capital invested. Such was substantially the English Railway Act of 1844: a stable and equitable plan offered to capital by a monarchical government without a written constitution, and after which it might be wise for us to pattern. No thoughtful person can contemplate the difficulties attending the correct solution of these questions without some apprehensions as to the future of the Republic. Fortunately there is an inner Republic, formed of the Bench and Bar, to whose wisdom, moderation, and patriotism, the issues joined are first submitted. Whatever may be our professional duties to our clients in private causes, the American Bar, as one of the moral and intellectual forces of the nation, has a clear and important duty to perform in matters of such great public concern. Here it is to do what we fitly may, to lift above the passions of the hour enterprises which are so closely and prominently connected with our chosen profession, and also with the wealth, prosperity, and glory of our common country.

PAPER

READ BY

M. DWIGHT COLLIER.

Stock Dividends and their Restraint.

The growth of corporate interests has been attended by the development of constitutional and statutory provisions for their regulation and control. The abuses which have arisen have produced the attendant restraints. The too liberal, if a stronger term is not applied, exercise of the legislative power to grant special charters, resulted in the almost universal adoption of constitutional provisions restricting the right to grant charters, to the enactment of general laws, under which alone private corporations could be organized. Under their broad definitions of purposes, and their facility of organization, the past few years have been remarkable for the growth of these interests. The vast majority of the corporations now in existence owe their life to these general laws, and it is this class to which this discussion more especially applies. Whether or not corporations created by special charters come within the prohibitions of the provisions under discussion, is a question involving principles which are not within the limits of this paper.

Another class of legislation has been the outgrowth of another evil, which has resulted from the liberal provisions of the general laws governing corporations and their powers. Corporate securities in the shape of capital stock, bonds, and

other negotiable securities, have increased so largely that the earning capacity of the corporations has been taxed to their full extent in order to meet the fixed charges which some of these entail, and to make any return upon the shares, which represent capital stock apparently invested. That this effort has been too great in many cases, the various foreclosure proceedings and reorganizations show. But the effect of this overburdening of corporations has made itself felt in the increased tax, especially in the case of railroads, which have fallen upon the public. The reaction which this latter burden has produced has given rise to the adoption of means to regulate and relieve it, and to prevent the causes which have occasioned it. The Granger laws, as they are called, were the effort to accomplish the former purpose, and the provisions under discussion that for the latter.

The latter are both constitutional and statutory, and will be given in the order of their importance.

In the states of Alabama, California, Colorado, Louisiana, Missouri, Pennsylvania, and Texas, the constitutional provisions are general, but in Illinois and Nebraska they apply only to railroads. Their language is practically the same, although in some of them it is more specific. The differences, however, are not especially important, for none of them materially affect the intent and purpose. In Illinois and Nebraska the provision that "all stock dividends and other fictitious increase of the capital stock, etc., shall be void," only strengthens the construction of the restraint involved in the entire section.

The language of the section of the constitution of California is so nearly identical with that of most of the states, that it will answer for the examination of the principles involved in them all. It is as follows: "No corporation shall issue stock or bonds except for money paid, labor done, or property actually received; and all fictitious increase of

stock or indebtedness shall be void.) The stock and bonded indebtedness of corporations shall not be increased except in pursuance of general law, nor without the consent of the persons holding the larger amount in value of stock, at a meeting called for that purpose, giving sixty days' public notice, as may be provided by law."

The section in the constitution of Texas consists of the first clause only of the above section.

The prohibition, and in most cases the same words, have been incorporated into the general statutes governing corporations and their organizations, in the states of Alabama, Missouri, and Pennsylvania, and, into those governing railroads, in Colorado and Illinois. The other states which have the constitutional provisions seem not to have taken any statutory action in conformity to them. In New York, the first clause of the section above set forth has been enacted only in the general law governing business corporations. In Wisconsin there is a statutory enactment which is general in its application, and whose prohibition is in essentially the same terms as in the constitutional prohibition given. In Massachusetts, telegraph and gas light companies are prohibited from declaring stock dividends; but the same restriction is applied to other corporations by the specific provisions as to the mode and manner of disposing of any increased issue of capital stock. In Maine the statutory enactment is as follows: "The capital stock subscribed for any corporation is declared to be, and stand for, the security of all creditors thereof: and no *payment upon any subscription to, or agreement for, the capital stock of any corporation, shall be deemed a payment within the purview of this chapter, unless bona fide made in cash, or in some other matter or thing at a bona fide valuation thereof.*"

While this language differs from the other provisions, its purpose and the evil aimed at are the same. It provides

for an issue of capital stock only upon the actual receipt by the corporation of a consideration of an equal value to it. It will be unnecessary to particularly notice it further, as the principles which govern the other provisions, will determine its meaning and effect. Similar provisions are not found in the constitutions or statutes of any of the other states not already enumerated.

Before the meaning and effect of these enactments can be determined, it will be necessary to examine the legal principles governing corporations and their capital stock. The first to be considered is that of corporate powers. The Supreme Court, in *Huntington vs. Savings Bank*, 96 U. S., 388, says, "It is a cardinal rule of the law of corporations that a corporation created by statute can exercise no power, and has no rights except such as are expressly given or necessarily implied." And in *Thomas vs. Railroad Co.*, 101 U. S. 71, they say, "We take the general doctrine to be in this country, though there may be exceptional cases, and some authorities to the contrary, that the power of corporations organized under legislative statutes are such, and such only, as these statutes confer, conceding the rule applicable to all statutes, that what is fairly implied is as much granted as what is expressed, it remains that the charter of a corporation is the measure of its powers, and that the enumeration of these powers implies the exclusion of all others." And it follows, as a logical and necessary conclusion from this doctrine, that no vote or act of a corporation can enlarge its chartered authority either as to the subjects or property of the corporation.* The authorities are so unanimous in their rulings on this, that it is unnecessary to cite them further to sustain what may be regarded as an elementary principle of the law of corporations.

* *Salem M. D. Corpn. vs. Ropes*, 6 Pick. 32; *Scoville vs. Thayer*, 105 U. S. 118; *Natl. Trust Co. vs. Miller*, 35 N. J. Eq. 162.

Acts, therefore, of corporations, in violation of their corporate powers, are *ultra vires* and void. Estoppel may bind them by reason of acts, which are *ultra vires*, when they result in a contract completely executed, but while the contract remains executory, no action can be maintained for its enforcement and no court will decree its execution, when such action or decree calls for the exercise of powers not granted by its charter, and hence *ultra vires*. "In every case, where a contract of a corporation was allowed to stand, although in contravention of its charter, it is safe to conclude that the charter did not declare the contract illegal and void."* It is unquestionable that "an illegal and void contract cannot be made valid by the acquiescence or ratification of every member of the corporation."† Where the powers of a corporation are limited and defined by the general laws, under which they derive their being, and such limitation is further enforced by a direct prohibition, declaring the acts in contravention of them void, the law is well settled to be, that "if a corporation has power it may delegate such power; and it is only when prohibited by law or the act is not incidental to the purposes of its incorporation, that it is *ultra vires* and void.‡ A contract or transfer of property to which a corporation is a party is absolutely void, if declared void by the act of incorporation or by a general law."§ It may be accepted as the established doctrine that "when the legislature prohibits an act or declares that it shall be unlawful to perform it, every rule of interpretation must say that the legislature intended to interpose its power

* Morawetz on Corpns. Sec. 45, 75; *in re Comstock*, 3 Sawy. 218; *Ashbury Ry. Co. vs. Riche*, L. R. 7 H. L. 652, 673.

† Morawetz on Corpns. Sec. 34; *Ashbury Ry. Co. vs. Riche*, L. R. 7 H. L. 653, 673; *Barton vs. Plank Road Co.*, 17 Barb. 397.

‡ *E. N. Y. & J. R. R. Co. vs. Lighthall*, 5 Abb. Pr. (N. S.) 461.

§ Morawetz on Corpns. sec. 38.

to prevent the act, and as one of the means of its prevention that courts should hold it void. This is as manifest as if the statutes had declared that it should be void. To hold otherwise, would be to give the person or individual the same rights in enforcing prohibited contracts, as the good citizen who respects and conforms to the laws.* The acts of a corporation, therefore, calling for the exercise of a corporate power unauthorized and positively prohibited by the law, would be void from the force of the prohibition alone, but, certainly, there can be no question of their invalidity, when they are declared void by the terms of the prohibitory clause. Being void, it follows that "no agreement of shareholders can make that a contract of the corporation, which the law says, cannot and shall not be so."† "Being void in its inception, as beyond the provision of the statute, it cannot be ratified even by the assent of the whole body of shareholders."‡ As the stockholders cannot, by their action, render valid and binding upon a corporation a contract, declared by law, void, so it also follows, that "The power of a corporation cannot be in the slightest degree enlarged or extended by the assent of its stockholders or by any action they may take."§ Neither can an act or contract, void by provision of law, be rendered binding by estoppel, nor will a partial performance of such a contract become the foundation of a right of action. "Can they found," says the Court, in *Ashbury Ry. Co. vs. Riche*, "such a right on an agreement, void for want of corporate authority and forbidden by the policy of the law? To hold that they can, is in our opinion, to hold that any act performed in executing a void contract makes all its parts valid, and that the more that

* *Cin. Mut. H. A. Co. vs. Rosenthal*, 55 Ills. 91.

† *Ashbury Ry. Co. vs. Riche*, L. R. 7 H. L. 695, 653.

‡ *Id.*

§ *Natl. Trust Co. vs. Miller*, 33 N. J. Eq. 162.

is done under a contract forbidden by law, the stronger is the claim to its enforcement by the courts."

The next feature of corporations to be considered is the distinction between its capital and capital stock. They are often used as interchangeable forms, but the difference is well defined, and has an important bearing in this discussion. The capital of a corporation includes its capital stock, but the capital stock embraces only indirectly the capital. "The capital stock is that money or property which is put into a single corporate fund, by those who, by subscription therefor, become members of the corporate body. That fund becomes the property of the aggregate body only."* "It is like that of a copartnership or joint stock company, the amount which the partners or associates put in as their stake in the concern."†

"The word 'capital,' as used with respect to corporations, primarily signifies the aggregate of the funds subscribed for, and either paid in or agreed to be paid in by the stockholders. (Boone on Corporations, sec. 105.) It is also in general use as signifying the sums paid in by the subscribers, with the addition of all gains and profits realized, with such diminutions as have resulted from losses incurred in transacting business." (Comstock, J., in *People vs. Commrs.*, 23 N. Y. 192-219.) In this latter sense the capital of a corporation is the fund with which it transacts its business, and embraces all its property, real and personal, constituting the assets of the corporation, such as are subject to execution at law. (*New Haven vs. City Bank*, 32 Conn. 106; *Thompson on Stockholders*, sec. 11, 12.) The words "capital stock," when aptly used, describe the interest of the stockholders in the corporation. Upon this distinction

* *Burrall vs. Bushwick R. R. Co.*, 75 N. Y. 216.

† *Williams vs. W. U. Tel. Co.*, 93 N. Y. 189; *Farrington vs. Tennessee*, 95 U. S. 686.

between the *capital* of a corporation, which is *its* property, and the *capital stock*, which represents the interests of stockholders in the corporation, and is *their* property, the power of the states to subject the shares of national banking associations to taxation is vindicated.* The title to all the property is in the corporation, and remains so until by proper action the interests are changed. So much of the capital as is represented by the capital stock issued, must always be kept unimpaired during the existence of the corporation: but that portion of the capital which represents the surplus arising from the operation of the business of the corporation is subject to the discretion of the managers in regard to its disposition. "Profits remain a part of the fund constituting the capital until actually divided among the stockholders, and if this fund is afterwards reduced by losses only the surplus can be divided, after deducting the amount of the capital first invested."† Until a division by the proper authorities this "surplus fund belongs to the corporation."‡ What the amount of the *capital* shall be is within the discretion of the managers, but the amount of the *capital stock* is limited and determined by the charter and the laws governing it.§ No corporation can, therefore, issue any more capital stock than the amount authorized, and any attempt to exceed this limit is illegal, and the stock is void. No rights accrue to creditors on account of such over issue, and the holder is not estopped by any action of himself to question its validity or his liability. Should an increase of capital stock be desired, the authority for such increase may be obtained in the

* *Weatherby vs. Baker*, 35 N. J. Eq. 505-6; *Van Allen vs. Assessors*, 3 Wall. 573, 584; *People vs. Commrs.*, 4 Wall. 244.

† *Morawetz on Corps.*, sec. 348; *Phelps vs. Farmers and M. Bk.*, 26 Conn. 268.

‡ *Williams vs. W. U. Tel. Co.*, 93 N. Y. 189.

§ *Farrington vs. Tennessee*, 95 U. S. 686.

manner provided by law. A strict compliance with the statutory requirements is necessary to acquire this right. But that this right to an increased capital stock may be of value, the power to issue it must be conferred upon the corporation, and its exercise must conform to the terms of the grant. The right to an increased capital stock may exist, but the power to avail of it by an issue may be limited and restricted to certain prescribed modes. The capital stock or shares of the corporation constitute a trust fund for the benefit of the general creditors of the corporation, and the subscriptions to this can only be fulfilled by a *bonâ fide* payment, in conformity with the contract.* “The earlier cases held that the contract of the subscribers could only be fulfilled by payment in money. In later cases this doctrine has been relaxed, and stock issued and paid up in work and labor or in purchase of property the corporation is authorized to hold, has been held to have been legally issued. Statutes have been passed authorizing corporations to purchase property needed for their business, and to issue stock in payment for it, or to accept such property in payment for subscriptions to capital stock. But in all such cases transactions under such powers have been upheld only where the contract for the rendition of services or the purchase of property, payable in stock, has been made in good faith, and the property taken in payment of stock subscriptions has been put in at a *bonâ fide* valuation; and the courts have inflexibly enforced the rule that payment of stock subscriptions is good as against creditors only where payment has been made in money, or in what may fairly be considered as moneys worth.”† Such may be considered the established rule as to contracts of subscription to the original issue of capital

* *Sawyer vs. Hoag*, 17 Wall. 610.

† *Weatherby vs. Baker*, 33 N. J. Eq. 513, and authorities cited.

stock. The contract in that case is between the individual subscribers and results in the formation of the corporation. "The contract for the issue of new shares in a corporation, already organized and formed, is not one with the members as individuals, but with the whole body acting in a corporate capacity, and is, therefore, a contract between the corporation on the one hand and the subscriber on the other. Every such contract requires a sufficient consideration for its support, and the parties legally qualified to enter into it. To constitute the subscriber under this contract a member, the corporation must issue a certificate or in some way recognize him as a member."* Such is the requirement of the contract as between the corporation and those dealing with it, as between the parties to it, but the same rule of good faith in the payment of the new capital stock applies as in the case of original capital stock. What shall constitute the legal and valid fulfillment of this contract for new stock, which will authorize the corporation to issue the certificate of membership to the subscribers is to be determined by the intent and meaning of the provisions under discussion.

What, then, is the individual interest of the shareholder in a corporation, and in what relation does he stand to its property? "Each share represents an aliquot part of the capital stock; but the holder cannot touch a dollar of the principal. He is entitled *only* to a share in the dividends and profits. Upon the dissolution of the institution, each shareholder is entitled to a proportional share of the residuum, after satisfying all liabilities."†

"The property of every corporation, including all its earnings and profits, belongs primarily to such corporation exclusively, and not to its stockholders individually or collectively. They have a certain claim, it is true, but their

* Morawetz on Corpsns., sec. 262.

† Farrington vs. Tennessee, 95 U. S. 687.

claims are always subordinate to the claims of creditors, and the latter approach much nearer to the condition of ownership than the former." * Until a division, a shareholder has no legal right to the property or profits of the corporation. Says Lord Denman, C. J., in *Queen vs. Arnaud*, 9 Ad. & El. (N. R.) 806: "The individual members of a corporation are no doubt interested, in one sense, in the property of the corporation, as they may derive individual benefit from its increase, or loss from its destruction; but in no legal sense are the individual members the owners." And in *Browne vs. Collins*, L. R. 12 Eq. Cas. 594, the Vice Chancellor, in speaking of the rights of a stockholder, says: "He has no inchoate or other legal right till the dividends have been declared." †

When, then, can dividends be declared, and by whom? "It is a fundamental rule that dividends can be paid only out of profits or the net increase of the capital of a corporation, and cannot be drawn upon the capital contributed by the shareholders for the purpose of carrying on the company's business. And a holder of shares in a corporation has no legal claim to profits earned by the company until a dividend has been declared by the proper agents; nor can he compel the declaration of a dividend, except when the profits are withheld in violation of the charter." ‡ But when there is a surplus fund, over and above the capital stock, paid in, then, "whether a dividend shall be made, and, if made, how much it shall be, and when and where it shall be payable, rest in the fair and honest discretion of the directors, uncontrollable by the courts." §

* *Karnes vs. Rochester & Genesee Valley R. R.*, 4 Abb. P. (N. S.) 110.

† *Hyatt vs. Allen*, 56 N. Y. 557; *Minot vs. Paige*, 99 Mass. 106; *Rand vs. Hubbel*, 115 Mass. 474.

‡ *Morawetz on Corps.* Sec. 344; *id.* 351.

§ *Williams vs. W. U. Tel. Co.*, 93 N. Y. 192.

The English cases decided that "Profits and dividends must be paid in cash;"* but the latest American case has stated the rule to be that they may be declared and divided in property, if the property is capable of division, and if the profits have been invested in other property necessary for the use of the corporation, which cannot be divided in kind, then a dividend may be declared, based upon these profits, or the corporation may borrow money on the faith of them, and divide it.† In every case, however, the amount divided must have been honestly earned, and the dividend must not impair the capital, represented by the capital stock issued.

Whether the English rule as to payment of profits and dividends should have been adhered to, is a question which the provisions under discussion would seem to answer in the affirmative. That it is not the law in this country, the prevalence of stock dividends and their approval by the courts clearly show. A stock dividend may be defined to be the issue by a corporation, as a dividend, of new shares, which have been paid up by the transfer from the surplus or profit and loss account to the account representing capital stock, of a sum equal to their par value. The "money earned by a corporation is corporate property, and not the separate property of the stockholders, unless and until distributed among them by the corporation. In the absence of any restraining statute, the corporation may treat it either as an increase of its property or as profits of its business."‡ But that such a dividend may be made, the stock issued must be represented by property. "A distribution of stock gratuitously to the stockholders of a company, based upon no value, a mere inflation, or, to use a phrase much in vogue,

* Morawetz on Corps. Sec. 351.

† Williams vs. W. U. Tel. Co., 93 N. Y. 189; Beers vs. Bridgeport S. Co., 42 Conn. 24.

‡ Rand vs. Hubbel, 115 Mass. 474.

a watering of stock, would be condemned by law." * A stock dividend is exceptional in its character, and the objections to them as bearing upon the value of the stock, address themselves more to the managers than to the court.† "After a stock dividend, a corporation has just as much property as it had before. It is just as solvent, and just as capable of meeting all demands upon it. After such a dividend, the aggregate of the stockholders own no more interest in the corporation than before. The whole number of shares before the stock dividend represented the whole property of the corporation, and after the dividend they represent that and no more. A stock dividend does not *distribute property*, but simply *dilutes the shares*, as they existed before." ‡ In the case just referred to, the stock dividend of the Western Union Company was sustained on the ground that there was no statute in New York which prohibited it. Such dividends do not affect the title of the property or transfer any legal consideration of property from the receiver to the corporation. They are merely changes of the entries in the books of the company.

What effect and meaning have these provisions in the light of these principles of corporate law? There is no difference in their force, whether they are embraced in either the Constitution or statute, or in both. If they form part of the statutes, under which the corporations are organized, and which confer their charter powers, there can be no question as to their restraining effect. As a constitutional provision alone, the first clause is self-enacting and prohibitory. It restrains the legislative power and the effect of its prohibition cannot be evaded by indirect any more than by direct action.§

* Williams vs. W. U. Tel. Co., 93 N. Y. 189.

† Howell vs. C. & N. W. Ry. Co., 51 Barb. 307.

‡ Williams vs. W. U. Tel. Co., 93 N. Y. 189.

§ Ewing vs. Oroville Min. Co., 56 Cal. 649.

The general laws where this constitutional prohibition is in force must be in conformity to it and can grant no powers which will conflict with its provisions.

The language used is clear and positive—"no corporation shall issue stocks or bonds except for money paid, labor done, or property actually received." It applies to every corporation, if general, and the words "no corporation shall" are a direct prohibition upon any exercise of power except in conformity to its requirements. It is restricted to no special issue of stock, but applies to any and all issues, whether original or an increase. It provides what the consideration of any contract for an issue of stock or bonds must be, and limits it to one of the three classes enumerated, viz.: "Money paid," "labor done," and "property actually received." Every party, therefore, to a contract with a corporation for an issue of stock must see to it that the consideration for his shares, with which he parts falls within one of these classes, in order that the corporation may exercise the power to issue its stock. Is this not a limitation of the charter powers of corporations, and is it not expressed in such prohibitive language that "every rule of interpretation must say that the legislature intended to interpose its power to prevent the act, and as one of the means of its prevention that the courts shall "hold any issue of stock contrary to its provisions," void?

Its proper construction must go further and be that the considerations named are the only legal considerations for a valid issue of stock, and that every other is excluded.

It must be borne in mind that this provision does not affect the amount of stock which a corporation may issue. This is governed by the charter and also by the statutory provisions limiting the amount of capital stock which may be held. If the statutory provisions in regard to an increase of capital stock are fully complied with, a corporation may have a right to an increased limit, but this right will be of no avail unless

the corporate power to issue it also exists. It is this power to issue which these provisions regulate. That the stock may be legal and valid, the manner and mode of exercise of the power to issue must be in strict compliance with their provisions. We have seen that an issue of stock by a corporation in excess of its charter limits has been held void, and that no liabilities or rights accrue to the holders of this excessive issue. Being void by reason of the want of authority to have it, no acts of the holders could make it valid and binding, or estop them from questioning its validity. In such case the stock would be invalid and void, because of its being an over-issue, while under the provisions now being considered the invalidity would arise from a disregard of the conditions annexed by law to an issue of stock duly authorized.

Thus far the discussion has been in regard to the meaning of the first part of the clause as to all issues of stock, but the force of the prohibition is further strengthened in its bearing upon an increase of the capital stock by its concluding words, "and all fictitious increase of stock or indebtedness shall be void." The first part of the clause, by its terms, defines the considerations for which alone a valid issue of stock can be made, and its effect upon the meaning of the word "fictitious," must now be considered. If no issue of stock is valid, except when made in conformity to the requirements of the first part of the clause, and for one of the considerations therein named, then the term "fictitious increase" must apply to any increase of capital stock whose issue fails to conform to its provisions. To limit its meaning merely to such issues of additional stock as are made gratuitously without any real property value to represent it, would be to defeat the intention and force of the language used. Unless this is its meaning, these provisions have no force or effect.

Are stock dividends then within the prohibition of these

provisions? It has been seen that a corporation has only those direct and implied powers which are granted by its charter and the statutes under which it is organized; that the exercise of powers not included in these is *ultra vires* and illegal, and when prohibited and expressly declared illegal and void the acts performed under it are void; that the title to all the property of a corporation is in the corporation and not in its stockholders individually or collectively; that the stockholders have no individual interest in the property until a division is made by the proper agents; that they cannot compel the declaration of a dividend, except where the profits are withheld in violation of the charter; that the provisions under discussion define and limit the consideration for a valid issue of stock to the three named; that the power to issue valid stock depends upon a strict compliance with their terms; that all other issues are embraced in the term "fictitious," and hence void.

It will not be contended that stock dividends can be sustained upon either of the first two considerations. No money is paid for the stock received, to the corporation, and certainly no labor has been performed by the receivers. They must rest, therefore, if at all, upon the remaining one, "property actually received." These dividends are based upon the accumulated profits and surplus funds, which the interest of the incorporation make it desirable to retain for corporate use, as part of its capital stock. No division is made of these funds to the shareholders, but the corporation merely transfers from the debit of the surplus account to the credit of the capital stock the necessary amount, and then distributes, as a dividend, the shares which have been thus paid up. The contract in this case, is, as has been seen, one between the corporation on one side, and the receiver on the other. What property does the corporation "actually receive" as the consideration for these shares?

Certainly the receiver has parted with none, for he has, as a stockholder, no title to the property, applied to the payment of these shares. That is, and has always been, in the corporation itself, and certainly it would be absurd to say that a change in the credits on the books of the corporation was in any legal sense a transfer of title. It receives nothing more than it had before, and as the shareholder cannot force a dividend of the funds thus applied, and has "no inchoate or legal title" until a division is made, he certainly transfers no property or title by the reception of his share of such a dividend. Such a dividend does not "distribute" property, but simply "dilutes" shares. As between the receiver and corporation, the transaction simply amounts to the relinquishment of his right to a share in this fund, when, if ever, it may be divided. It is not a right capable of enforcement, and, although the effect of the relinquishment may be that the corporation does still retain the fund, still it cannot be said to be "property actually received," within the meaning of these provisions. Where the legislative body has expressed its will in restraining statutes or laws, the ruling of courts, in the absence of such laws, can have no weight.

If, then, stock dividends cannot be supported by any one of the required considerations, the prohibition applies, and no power exists in a corporation to issue the stock called for by them. Such an increase would come within the latter part of the clause that "all fictitious increase of stock, etc., shall be void." This construction is the only one which will give full meaning and force to these provisions, and fully meet the evils aimed at.

It may be contended that when a shareholder has accepted the shares under such dividends, he has in effect received a dividend of this fund and is estopped from questioning the validity of the transaction. In other words, granting all that

has been claimed as to the effect of these provisions, stock dividends will become valid by the shareholders' acceptance of the shares issued under them. It is true that the doctrine of estoppel may prevent the questioning of corporate contracts when fully executed, but it can never render that a valid contract which the law distinctly prohibits, and declares shall be illegal and void. Such is the case in these restraining provisions. The unanimous consent of all the stockholders cannot extend the powers of the corporation, nor render that legal and binding which the laws governing and forming part of their charter in terms declare illegal and void. To hold otherwise would be to defeat all attempts to control corporations, and enable them to overcome every obnoxious restraint. An increase of stock by way of stock dividends would be void in its inception, and cannot be made valid by any rule of law or doctrine of estoppel.

With the effect of this construction upon stock which may have been issued contrary to these provisions, this discussion has nothing to do. Should such a question ever arise it must be decided upon the facts and the law. Neither is it within its limits to discuss the manner and mode of accomplishing the end aimed at in stock dividends. Its purpose has ended with the examination of the constitutional and statutory restraints of these dividends.

PAPER

READ BY

SIMON STERNE.

The Prevention of Defective and Slipshod Legislation.

Who better than the members of the American Bar Association are qualified to draw attention to the evils of prevailing legislative methods, to judge of the efficacy of, and, if persuaded of its feasibility, to promote the remedy? You are the legislative draughtsmen; you interpret as lawyers the meaning of the statutes; and, as judges, decide upon their conformity to the constitutions of the states and of the union.

Whether the description I shall give of the way in which a law comes into existence applies to the conditions prevailing in his state, each one of my hearers can determine for himself. I shall take, as typical, the state of New York, assuming that like conditions (differing only in degree) prevail in sister states.

The legislative body of the state of New York meets on the first Monday of January in each year, to sit as long as the patience and interests of the majority may determine, the session varying from four to six months. The lower house is elected annually. A large proportion of the members come, therefore, to each session without any legislative experience whatever; and every second year this is equally true of the upper house. Prior to meeting, no con-

sultation is had among the members as to the course to be pursued with reference to public legislation, nor are laws prepared in advance by any authoritative or responsible portion of the law-makers. I leave out of sight conclaves of politicians with legislators, to commit them to some course affecting personal interests, involved in legislation to be proposed during the session. The first few days of the session are occupied with the election of speaker and with the more or less disgraceful scrambles for positions on committees by members in the interests of powerful corporations or political combinations. The railway agents are active in throwing their influence or disbursing their moneys in favor of a candidate for speaker who will appoint the railway committee in their interests; the insurance companies' agents are not disinterested spectators in this contest, and are anxious to secure committees not adverse to them. The juntas of municipal politicians in power, and those who desire to be so, are willing to support this or that politician for the position of speaker, dependent upon his pledge to appoint members on the committee of cities. Thus combined and corporate interests, which should engage the watchful and jealous eye of government, and against whose power for evil it is the province of the Legislature to protect the community, are generally the most active during the earliest days of the legislative session to secure advantages of position, so as to prevent unfriendly action or secure favorable measures during the progress of the session. The result of this contest is that, to some degree, varying from year to year as to extent, sinister elements control or influence the composition of the committees, and these courts of preliminary inquiry for legislative action are either packed or made impotent or baneful, by the interjection of members whose action upon a large body of legislation is determined or pledged in advance of the session. In many individual cases, that action is

already determined upon before this contest takes place; indeed, as preliminary to candidature; but as this condition of things belongs rather to the domain of representation than to that of legislation, I can pass it by.

The speaker elected, and committees formed, bills are then, in rapid succession, presented by individual legislators, are read by their titles, and referred to their appropriate committees. They are generally bills which have been placed in the hands of these legislators to give to some one man or body of men some advantage over his fellows, or through the instrumentality of the law to exonerate some man or body of men from the burden or pressure of the general law, or to give to some locality the right or privilege to do or refrain from doing something which either the law forbids or requires to be done. Here and there a general bill is offered, intended for the general public good. But the majority of the bills, which find their way to the speaker's desk, and are by him referred to the respective committees, do not belong to the latter class. These bills are not prepared by the individual legislators themselves, who are frequently ignorant of the contents of the measures they propose, but by lawyers who are privately retained for the special interests behind the bill, and who—naturally zealous to serve a client and incorporate in the bill all that may be of service to him or it—are little mindful of the consequences, in the event of its passage, of such a bill on the general body of the law. That legislation so conceived and so promoted requires the most jealous watchfulness at the hands of a body of impartial and scientifically educated legislators would appear to be self-evident. Instead of this, however, but few of the members are experienced lawyers, and *the methods* of legislation fail to aid them in sifting bills thus proposed and promoted, but, on the contrary, the existing machinery is an aid to bad, and an impediment to

good, law-making. When a corrupt or ignorant judge renders an erroneous or perverse judgment, he wrongfully transfers property from but one individual to another, and the direct pecuniary mischief is probably ended with that single case. In the case of legislation, the consequences are much more far reaching. The damage created by a bad law applies to hundreds of cases, and is incalculable in extent.

Prof. Walker, in his recent work on Political Economy, says of the evil effects of a few lines in the English Poor Law (22, George III.):

"Such may be the effects of a foolish law. The legislator may think it hard that his power for good is so closely restricted; but he has no reason to complain of any limits upon his power of evil. On the contrary, it would almost seem that there could be no nation, or any race of men which a few laws respecting industry, trade and finance, passed by country squires or labor demagogues, in defiance of economic principles, could not transform within a half generation into a nation of beasts."

The *nisi prius* trial machinery of the common law, which is given as an aid to a judge in the formation of a sound judgment and to prevent injustice, should characterize the procedure of the law-making body so as to prevent them from committing the more serious injuries arising from the greater consequence of their acts.

Yet, how far short of this procedure is the practice of the legislature, even during the earlier period of the legislative session! The committees give some degree of consideration to the bills which come before them; they read them; appoint a day for argument by giving notice to the advocates of the bill, and if, by any happy accident, adversaries to the bill know that a measure is pending which effects them injuriously, they also have a chance to be heard. At such hearing, assertions are made in favor and against the bill.

There is no attempt made to take proof, and all that is done judicially to advise the committeemen, is by short and unsupported statement of counsel. If the bill involves large interests, the more effective work is done by the trained lobbyists, who, through political influence, by promises to obtain support for other measures in which the members are interested, sometimes even by promise or payment of money, manage to secure the consent of a requisite number of votes to secure either the passage or defeat of a measure. I am quite willing to concede that there is not nearly so much corruption in our legislative halls as would be implied by the moneys expended upon lobbyists. As from the nature of his operations he need not give to his principals an account of his expenditures, he is irresistibly tempted to exaggerate the sum that he is called upon to pay to the legislators. That the lobbyist can, however, under the pretense of bribing members, obtain any money at all from persons or corporations of large means, whose interests may be menaced or promoted, shows the low esteem in which our legislative bodies are held by the chiefs of our industrial community.

Toward the end of the session, bills then introduced are frequently not printed; they are acted upon by committees under great pressure to finish their work before the end of the session. They are frequently not placed in the hands of the standing committee, but are at once referred to the committee of the whole, and by it to a sub-committee of the whole, known as the grinding committee, and when the vote is taken, it is generally taken in ignorance of the scope and purport of the measure. In these last days of the session, votes are generally bargained away for counter votes from fellow members for measures of a like nature. We can make clear to our minds the monstrous character of this proceeding if we would suppose a court of justice, on find-

ing its calendar encumbered with causes which cannot be tried before the summer vacation, dispensing with the taking of the testimony of witnesses and argument of counsel, and deciding such causes upon the pleadings alone. The miscarriage and travesty of justice which would result from such a course partakes of the same nature, if we would but see it, of the mischief which is annually enacted at Albany, and at most, if not all, other capitals of the country, in the corrupt and slipshod method of grinding out laws towards the end of a legislative session.*.

* The *American Law Review*, in an article published since the reading of this essay (September-October, 1884), written by George M. Davie, Esq., on "Suing the State," says (page 815): "Under this system (enforcing claims against the state by legislation), the loose legislative committee takes the place of a court; the whisper of the lobbyist is the argument of counsel; the rambling talk of the committee-room is the trial, in which the committeeman is often the advocate of the enemy, as well as the judge. Then, too, the hurry of the session, and the excitement of politics, forbid due deliberation. To arrive at justice in controversies between individuals, or where the state sues an individual, there is provided the learned and unbiassed judge; the dignified court, full of notice to both sides; the introduction, on analysis, of the evidential facts; a deliberate and impartial trial; and an appeal to a full bench to correct possible errors. But when the claim is one by a citizen against the state, all is changed. A session of the legislature must be awaited; the claim must be introduced as a bill; it must be referred to an untrained committee of accidental composition; no time, place, or rule is fixed for the preparation or introduction of evidence; there is often but a hurried, gossipy, and not very dignified discussion, perhaps without notice to the other side; neither learning nor impartiality is required; and the bill is thus "put through," or "sat upon," or "pigeon-holed" (to use the technical term of the system), according to the activity of the lobby, the distribution of influences, or as fortune may be for or against it. Besides, in legislative trials of a claim, nothing is final. If the lobbyist is defeated, he has but to "hang on," tasking the time of successive legislatures, until the death or scattering of opposing witnesses, or a careless committee, or other accidental circumstance shall at last enable him to slip through his bill. Claims have thus passed Congress

It may be said that the passage of a statute has no analogy to a lawsuit. Not to have seen the analogy has been one of our great national errors. By a legal fiction, deeply embedded in our jurisprudence, we have assumed that every statute, whether public or private, being the act of the sovereign people, is dictated by benevolence, has its motives in public policy and its language prompted by wisdom. The lawyer who is called upon to aid the court in the interpretation of statutes, oftentimes feels the absurdity of this fiction, when in deference to it, he speaks seriously of an *intention* of the legislature, *apropos* of an absurd or mischievous bill which he well knows was introduced during the last days of the session, was smuggled through without debate, and which either by accident or the result of deep laid design, escaped the adverse scrutiny of the few able and sincere members of the legislative body. That bills of sinister and far reaching intent are thus delayed to the last days of the session before submission, so as designedly to prevent notice and debate, is a well-known fact. That during a session, a considerable number of appropriate and useful laws are passed, goes without saying, and that a great number of obnoxious bills are suppressed is also true. The situation would be intolerable were it not so. But that the people regard the sum total of congressional and state legislative activity as maleficent instead of beneficent, is clearly shown by the fact that they look forward to the convening of these bodies with dread, and hail their adjournment with a sense of relief.

Some few years ago in London, I was driving with a friend through Parliament Street, which faces the Victoria Tower, that have been rejected by previous congresses for a generation or two before ; and there are now claims before Congress, some of which will no doubt ultimately get through, that have been rejected many times, and that have annoyed it ever since the revolutionary war."

on the top of which brightly burned the lime-light, telling to all London that Parliament was in session; he said to me that he felt safer because six hundred wise and honest men were considering what was best for the nation, and it always seemed to him no harm could well come to England, as a whole, so long as Parliament sat. I certainly could not help silently contrasting this confidence in the wisdom and integrity of Parliament with the feeling with which our people regard our law factories.

On investigating the causes which create so great a disparity between the legislative results in the mother country and those of her numerous cis-Atlantic progeny, I was forced to come to the conclusion that the greater part of the difference in results is due mainly to difference in *methods*. In no other department of human activity is there any such disparity between results achieved in England and those which the United States are able to accomplish. The latter manufacture as good machinery, run railways as successfully as Great Britain does, and in many departments of human activity far surpass the mother country; for example, in the making of agricultural implements, sewing machines, pianos, machine made boots, &c. For a reason, important in this connection to discover, the American intellect has not devoted itself to improvement in its legislative machinery to keep pace with the requirements of the age.

Much of this thought-stagnation, on so important a subject, is doubtless due to the confidence that was felt, until the outbreak of the civil war, that the organizers of our government were so wise in their application of the theories of government to practice that we could dispense for all time with thinking on the subject, and that, somehow, this department of human activity was an exception to the law of evolution and progress. We were taught to believe that governmental questions were solved for us by a superior intelligence. This indulgence in a fetichism which has re-

tarded our critical faculty has now to be paid for. At every turn we discover that our institutions, if administered by the old methods, fail to offer a solution for the new questions which modern civilization presents. Organisms have grown up, dangerous to the commonwealth, because we have carried our confidence in existing political machinery to an extreme not justified by any principle of political philosophy. The ready answer that it was devised by the founders, stayed progress to such a degree that institutional reforms have, since 1789, found less encouragement in the United States than almost anywhere else. There has, therefore, been scarcely any improvement in legislative machinery since the organization of the government, and yet what a vast change the past one hundred years have wrought in population and condition, increasing the four millions of inhabitants, scattered along the Atlantic coast, into a nation of fifty-five millions, changing them from a homogeneous people of farmers and planters into a nation embracing within itself all the diversified industries and economic wants of almost the whole human family, and occupying a continent which lays under contribution, for its development, the whole field of sciences and of arts.

Washington and Jefferson probably crossed the Potomac on a rope-ferry or pontoon bridge. No railway engineer thinks *that* a good reason for taking a train of cars across a bridge which, though good enough for the saddle horses or gigs of these great ancestors, is wretchedly inadequate for the perfected machinery of steam land transportation.¹ In refusing to change the machinery of legislation fitted for the conditions of 1789, to the needs of to-day, our countrymen have been as devoid of wisdom as would be an engineer of a railroad were he to attempt, out of respect for the wisdom of the builders of the foundations of our government, to use the rope-ferry of Revolutionary times for his transportation

service. We convene and manage the legislative business on the theory that we are a homogeneous nation of farmers and planters, and still retain a machinery so wretchedly inadequate for the purpose that the wonder is that the condition of affairs is as tolerable as we find it to be.

With the application of steam to industrial pursuits, and through the instrumentality of corporate management, the modern era of production on a large scale began almost simultaneously with the organization of our government. Not ignoring the enormous advantages which, from a politico-economic point of view, flow to society through corporate existence, and that wealth is more economically produced by concentration in production, it is, nevertheless, true that the corporate conscience is something other and less developed than the individual conscience, and that corporations require from the law-maker more watchfulness than the individual, because the corporate life is longer and its grasp wider; it is less considerate of private rights; it has, as a rule, more money than private individuals have, and, therefore, more power; and it has less direct personal responsibility in the exercise of this power than the individual. Hence the necessity for strengthening the law-making power to prevent the citizens from being wronged by this *creature* of the law, which has grown, for want of proper and timely restraint, almost into a *master* of the law. England also freely chartered corporations; and also from about 1825 to 1845 ran mad with the new found toy of civilization—unlimited enterprise with limited liability. She found the lobbies of her halls of legislation swarming with agents of her corporations buttonholing members, and exercising oft times, as Francis the historian of the railway says, influences of a corrupt nature, so that public legislation was impeded, and private and special legislation took the foremost rank in Parliament.

England's statesmen of the last generation had wisdom enough to see that successfully to cope with the ingenuity of the captains of the modern industrial era it was necessary to arm the legislature with additional and better methods to sift legislation, so as to separate the useful from the mischievous. At an earlier period, but subsequent to the foundation of our own government, the British cabinet were converted from personal advisers to the crown to the Chief Executive Committee of Parliament, and as a part of the responsibility which attached to the party in power, the guardianship over the law and the changes therein to be made to meet public exigencies, was assumed by the ministry in office as part of its duties. We, on the other hand, have adopted party government without attaching thereto this grave party responsibility. Our public laws and changes therein are not committed to the care of any official body. This important change in the English Constitution was the first step in legislative development and reform, which culminated in the adoption of the standing orders of 1848, and completed the separation between the method of treatment of public from private and local bills. The former are placed under the wing of the cabinet. The latter are no longer treated as legislation, strictly speaking, but as petitions to Parliament for special immunity or privileges which are conducted by private parties, subject to a strict rule of procedure, tried as a law suit, the petition and bill being filed before the beginning of the session, and opposed at every step, as a whole and in detail, by the Board of Trade, and by every private interest which may be menaced or affected thereby. Counter-petitions, attorneys, counsel and a trial, a standing and a day in court to all parties in interest before the bill can become a law, prevent wrong to individuals; counsel for the ministry for the public bills, and special counsel for the private bills committees to aid them in the intelligent discharge of their

work, prevent the possibility, by collusion, of working a public wrong.

By virtue of this system of standing orders, no private or local bill is considered by Parliament unless deposited in the private bills office sixty days in advance of the session. If it be a railway or canal project a deposit of five per cent. of the estimated cost of construction must be made at the time of filing the bill. If it involves the exercise of the right of eminent domain, evidence must be given that notice of intention to file the bill has been served on all the persons whose interests are likely to be affected adversely by the legislation. Accompanying these documents, as to the contents of which the most precise instructions are given in the rules, there must also be deposited a sum of money to cover the expenses of preliminary examinations of the bill, in order to ascertain, officially, whether the standing orders have been complied with.

The opponents of the bill have until fifteen days before the opening of the session of Parliament to file their objections to the bill, and to point out wherein the standing orders have not been complied with by the petitioners. If, either by the unaided investigations of the official examiners, or at the suggestion of adversaries, it becomes apparent that the promoters have failed to give the requisite notice by advertisement in the public gazettes, and by personal service, or that the map is not in conformity with the bill, or in any other particulars they have failed to comply with the standing orders, the bill is endorsed "standing orders not complied with," and Parliament is relieved from its consideration during that session. If there be a question whether the standing orders have been complied with, the parliamentary agent is heard upon the subject. If he can explain a seeming neglect, the examiners may allow the bill to be entertained, but no substantial deviation from the rules is tolerated,

and non-compliance means non-consideration. If the bill is entertained, a further payment is to be made by the promoters to pay its way during its consideration in committee. Each one of these payments is about £50. Bills then are separated by the chairman of the Ways and Means committee and the chairman of committees of the House of Lords. Those that involve railway or canal projects, or which involve the exercise of the right of eminent domain, are referred for special scrutiny to the Board of Trade. All are examined by the chairman of committees of the House of Lords, who makes his suggestions and amendments, which are generally accepted by the parliamentary agents, who are the attorneys for the promoters of private and local bills, in filing the same and conducting them until the parliamentary committees come to consider the bills in open session. The bills are then referred for trial. The trial committees are composed of chairmen, who are members of Parliament, one or two additional members and several experts, thoroughly conversant with the technical elements of the subject matter of the bills, and who need not be members of Parliament. A calendar, analogous in character to calendars of trial causes in a court of justice, is then prepared containing a list of the bills, and a trial is had in which the petitioners as well as the adversaries against the bill are represented by counsel. The question of the expediency of the passage of the measure is determined first, as a whole, on the preamble, and then by sections, and every injury, direct or indirect, is presented for the consideration of the committee, to be avoided, if possible, by amendments to clauses of the bill, or by the awarding of proper compensation. The adversary who succeeds in a defense of a property right, to secure by amendment the insertion of a clause which, in all fairness should, for his protection, have originally been inserted in the draft deposited by the promoters of the bill, mulcts the latter to pay the contestant's

costs. If the committee determine in favor of the bill, they so report, together with their amendments, to the House, and with but very rare exceptions the House regards the findings of a committee on a private or local bill as final. This method of ascertaining the merits of a measure is so complete, the examination of witnesses and experts is so thorough, every element that can enlighten the mind of the legislator has been brought to bear with so much accuracy and forensic skill, that the margin of human error, after such a trial, is very small. The amount paid to Parliament for considering a private or a local measure is, on an average, one thousand dollars a bill. By these payments, which are somewhat in excess of the cost of the service of examination, the expense of private legislation is not only avoided to the English Parliament, but even the expense of public legislation is defrayed.

Now, note the very great difference between that system and the no-system of the United States. It places the business of draughting proposed legislation (both public and private) into the hands of skilled specialists, called parliamentary draughtsmen. The services of the best intellects among these specialists,—parliamentary draughtsmen and counsel,—are employed by the speaker, by the chairmen of committees, and by the ministry; and they are consulted by the parliamentary agents in important cases of private legislation. This system has caused the lobby virtually to disappear, a fair trial and no favor being now had for private bills. A member of a committee regards being buttonholed or talked to in the interest of a measure before his committee almost with the same disfavor with which a self-respecting judge would regard a like attempt out of court to entrap his judgment, or influence his opinion. In place of the lobby as we know it, composed of a disreputable set of go-betweens, to bribe a bad measure through a committee, or to negotiate for the

release out of committee of a good one, England now has a trained bar analogous to the common-law bar; the parliamentary agents take the place of attorneys, and parliamentary counsel take the place of barristers. A division has been made between the treatment of public and private legislation, which recognizes the fundamental distinction between them, to the advantage of both public and private legislation. A private bill is either an exemption from a public burden or it is a special privilege. Therefore, in exercising this power, the legislature acts much more in a judicial than in a legislative character, and the legislature must, therefore be armed, with all the instruments given to the courts, to ascertain the truth.

One other important fact was recognized by this change; that in the pressure of modern society for development the general body of the law can not possibly keep pace with its ever varying features and necessities: no attempt, therefore, was made to restrict private legislation, but it was subjected to rule and form, submitted to scrutiny, and surrounded by safeguards, so that while on the one hand it may meet the demands for legislation of a private and local character to vary the general law, it yet, on the other hand to meet such exigencies, does no injustice to other private and local interests, and the general body of the law is not allowed to be torn to pieces at the demand and under the pressure of private interests.

We also have recognized the corruptions and evils incident to our system of legislation, but have sought the remedy in a different direction. Discovering that our method of dealing with demands for legislation has resulted in corruption, we determined to cut off the legislation which yielded this crop of corruption. We took recourse to constitutional restrictions upon special and private legislation in numerous cases which, theretofore, gave food to the lobby, and said

that such objects should thereafter be accomplished by a change of the general law. This attempted remedy for an undoubted evil has afforded no protection whatever, but, on the contrary, within a few years after the adoption of such amendments, it is discovered that special legislation of the worst possible description lurks under the form of amendments to the general law, and, instead of driving the enemy of pure legislation from the field, we drive the devil under a monk's cowl, not thereby lessening his mischievous activity, but rather enabling him, still more adroitly, to catch the unwary legislator. The demand for special legislation is a justifiable and a constant one; to attempt to repress it, as with every natural want, causes it to seek secret means for its gratification. The wise legislator regulates human activity and makes no attempt at the repression of proper natural desires. Every such attempt must end in failure, and has so ended from the beginning of time. In my own experience, since the inhibition of special legislation, in 1874, special laws, under the guise of general laws, were in three instances smuggled through the legislature for the purpose of affecting litigations relating to private interests, and which changed the course of such litigations. Almost every New York lawyer, in active practice, can probably recall like instances in the last decade. In several cases, where the disguise was too flimsy, the Court of Appeals recognized the attempted evasion, and declared the acts to be unconstitutional.

But many such acts more skilfully disguised will pass the scrutiny of the courts undetected, so that in many cases the general law has and will continue to be changed under the pressure of private interests, and no discovery will be made of the lurking intent of the promoters of the bill, as a judicial inquiry into the origin of the law by an examination of the history of its progress through the legislative halls is forbidden by the policy of the law.

The constitutional restriction of the legislature to pass special and local acts has not only failed to accomplish the purposes of the projectors of the reform, and produced a condition of affairs more dangerous than that which it was intended to cure, but it has also placed the general body of the law in great jeopardy by creating a strong incentive to destroy the general law to serve special interests. Under ordinary circumstances a special interest finding that the general law does not provide for the exigencies of its situation, will attempt to secure by special act such legislation as will meet its requirements and necessities. In this effort it now finds itself balked by the Constitution, and it bends its energies to change the general law to meet the special case. And what is there to hinder, if it has political influence and money, and is willing and ready to use both unscrupulously, or what is there to protect the general body of the law from such desecration? It is nobody's business to stand guard over the law; we have no governmental or political organization that is charged with the duty of guardianship over the statute law as England has. We look in vain for any organism in the state to protect the general law from change or invasion, at the dictate of private interests. It may be said that that is part of the duty of Congress and the state legislature. True, but the duty of initiation and watchfulness is one that must be coupled, for their habitual exercise, with responsibility, and to charge a whole body, constantly dissolving into its constituent elements, with the duty of initiation and watchfulness, is practically to charge nobody with it. In all European constitutional forms of government, the dominant party which is responsible for the ministry is, through the ministry, held responsible for the public legislation, during the period while the party wields power. We have no national nor state ministry to hold responsible for public legislation. The United States cabinet is composed of executive

officers, and although in their annual reports they may suggest to Congress such statutes as their experience may have taught them to be appropriate for the government of their departments, yet they scarcely ever venture to draught the bill, and any active interposition to secure its passage would probably be regarded as an intrusion; at all events, failure to secure proper legislation is not laid to the door of the cabinet, and they are not held responsible by the people for mischievous public legislation. Congress is, therefore, left without leadership on these matters of great public importance. The only leadership that it has is of a political character to influence public opinion, and therefore the legislation which is prompted by such leaders is not done for its own sake, but to effect an ulterior object, and is sure to be carelessly done. The little attention that is paid to the language of legislation is somewhat indicated by the fact that there is not a single American work upon Legislative Expression, though I am addressing lawyers who probably have extensive libraries, among which the Law Library Series, published in Philadelphia many years ago, surely has place, I venture to say that few of you remember the little treatise on Legislative Expression, reprinted from the English work of Coode, which never yet found a venturesome American editor to apply it to our needs.

The states have not even executive cabinets. Excepting such very slight suggestions as the governor, in his annual message, may make to the law-makers, there is no initiative for public legislation in any state organism. The party in power is occupied with the important question of how to keep the other party out of power. The suggestions for public legislation generally come from without. The opposition to proposed general legislation also generally comes from without. A curious illustration of this is to be found in the recent history of code legislation in the State of New

York. Several commissioners, of which Mr. Throop was at the head, were charged with the duty of revising the Code of Procedure. Now, I shall express no opinion how well or ill this duty was discharged. My business is done when I have drawn your attention to how the Code came to be enacted after the commissioners reported. Scarcely had the report been made when the Bar awoke to the great changes that were impending in the law of procedure, and the many incongruities (probably necessarily) involved in so extensive a task. Sides were taken in Bar Associations for and against any change, and finally it was determined that if some important amendments could be incorporated it should be suffered to pass as a whole without strenuous opposition.

Whatever sides the legislators took in this controversy were mainly of a personal character, and as instructed by the Bar Associations or the commissioners. At last, the first thirteen chapters were passed. After it became a law, its incongruities were discovered to be so great, that it required an act called the Temporary Act to be passed, of seventeen sections, one of which contains seventeen and the other ten sub-divisions, to limit the application of the act, to amend its repealing clauses, and to explain its provisions. During the same session, twenty-two days after the act went into effect, an act was passed to suspend its operation for four months, and three several acts were passed in the following session of 1878, to limit the operation of the repealing clauses of the bill.

After the charter for the city of New York was passed in 1873, it was discovered that the repealing clause threatened a general jail delivery, and Governor Dix actually withheld his signature from the charter until an amendatory act was passed (Chap. 326, Laws of 1873) to prevent this dire result.

Another instance of the slipshod manner in which the legislature does its work, is given by the so-called municipal

code, which passed the legislature of 1882. The commissioners appointed to draft this code made a report, to reduce to order the laws which affected the city of New York. In reprinting the volume of the report for the legislature a page of the original was left out. Did a single legislator discover the omission? Not one. There was, of course, no third reading, as a whole, of the bill, and it was passed and signed as a law, with this omission. A subsequent legislature was called upon to make good the omission. The responsibility of this law was left entirely with the gentlemen entrusted with this codification. The legislature took their work on trust. If the Bar Association, or some other body, had taken the trouble to analyze it, suggested amendments, or its rejection, there might have been a contest over its adoption. The governor is constantly compelled to use the veto power to return to the legislature, bills which were passed in so slipshod a manner, although, possibly meritorious in themselves, that great confusion would arise if they were permitted to become law. There were three notable instances of this during the very last session of the New York legislature.*

* Since the reading of this paper before the Association, the writer was professionally retained by the holders of a majority of the certificates, issued by the receivers of the West Shore and Buffalo Railroad Company, to protect them from the consequences of a possible mistake made in their appointment, as not being in conformity with the New York law of 1883 relating to receivers. This law is another glaring illustration of the slipshod manner in which bills of the most far-reaching importance, and dealing with the heaviest pecuniary interests of the community, are passed by the legislature. The favoritism and corruption incident to the appointment of receivers of insolvent financial corporations, particularly life insurance companies and savings banks (applications for such receivers being made before willing judges, in judicial districts other than where the corporations had their main offices), induced the legislature to change the law in relation to receiverships so as to limit applications to the district where the main office of the corporation is situated.

Enough has been said to show my hearers that there is no organization either in the national or state law-making bodies to prevent mischievous special laws from being passed under the guise of general laws, or to prevent the whole body of our law from being torn to pieces, for individual self-aggrandizement, which our institutions tend so abnormally to develop. Hence, all limitations on special legislation are particularly dangerous in this country, where there is no safeguard to shield the *corpus juris* from attack, particularly when the attack is of an insidious and disguised character, and so devised as to evade the constitutional amendment inhibiting special legislation.

Whilst this bill was on its passage through the legislature, it was made applicable to railroad corporations, without any reason therefor. Although the general provisions of the bill show no intent on the part of the legislature to make its provisions applicable to receiverships pending the foreclosure of a mortgage, the language of the bill was so sweeping, that Justice Daniels, after a most conscientious and elaborate examination of the question, came to the conclusion (evidently with reluctance) that such receiverships were covered by its language.

One of the provisions of this bill gives to receivers appointed thereunder, two and one-half per cent. commissions on receipts and disbursements on sums over \$100,000. This, in the active business of a railway corporation, creates substantially a first mortgage in the hands of the receivers, who under its provisions, would pay themselves an amount so grossly in excess of any reasonable sum for their services, and makes the burden upon the corporation so onerous, that unless the bill is amended, all applications for receiverships in the state of New York will hereafter be made in the interest of the proposed receivers, rather than in the interest of the bondholders. Had this law been subjected to some scrutiny on the part of the railroad corporations which were to be affected thereby, or any one of them, the excessive amount of this commission would have caused the attention of the legislature to be drawn to its inapplicability to receiverships of this character, and some provision would have been inserted limiting the operations of the bill, or changing the commissions. No such mistake would have been made by the English Board of Trade or by any public body of Revisers on so important a subject.

Upon lawyers, as a class, a very onerous burden is cast by this condition of affairs. In every department of human activity constant practice brings rest in labor. In time, the processes which were laborious efforts of the mind become mechanical, and are done by what psychologists call unconscious cerebration. The artist, as his reputation rises, and his remuneration increases, paints his pictures with greater facility, and there come to him, if frugal, not only financial ease, but increasing pleasure in his work, arising largely from decreasing painful efforts. The doctor, with increasing experience, diagnoses and prescribes for familiar diseases by an acquired instinct. How different is it with a lawyer in active practice? The constant changes in the law, aggravated by the limitation on special legislation, make it impossible for him ever to feel safe in advising a client even on the law of promissory notes, without first consulting the most recent volume of statutes, to see whether to meet a special case the legislature has not been induced to obliterate all the old land-marks.

Not content, however, with the quack medicine of restricting special legislation, and thus rapidly destroying our general body of the law, there is another ready relief now advertised by political charlatans, warranted to cure all the evils of bad legislation, which is somewhat less mischievous, but more absurd, than the one which we have already adopted. That is the suggestion for biennial, instead of annual legislative meetings. Dr. Sangrado to the life!—"When the body is sick, the blood is sick. Take from the patient half his sick blood, and he is but half as sick as he was. Our legislatures do more harm than good when they meet, cut their years of meeting to one half, and presto! but half the mischief."

That legislation is the highest function of man's activity, and, when rightly exercised, its most beneficent manifesta-

tion, is a fact which is left out of sight by these reasoners. A manufacturer, who finds himself running behindhand because his processes are out of date and his men incompetent, will not, by running at half time, prevent his competitors from turning out better blankets than he does, nor keep himself out of bankruptcy. He must tear out his antiquated machinery, discharge his incompetent workmen, and improve his methods of manufacture.

To allow two years to intervene between sessions of the legislature in busy communities like our own, wherein the powers for evil are almost as busy as the powers for good, is to offer an additional inducement to every plotter against the commonwealth or its people to perfect his plans (under the existing lax laws), to circumvent the legislation of the day, so that, if he succeed in so doing, for two years, at least, he will not be interfered with. It is well to bear in mind that for thirty years our legislatures have been run by the corporate powers in their own way, that the legislation of the past generation has been whatever the strong nets and long purses of our builders-up of corporate wealth chose to have it: we are just now awakening to the fact that competition is not the solution for the things that will not compete, but combine; and that the state owes to the community an intelligent supervision of the artificial organisms which it has created, so that these artificial organisms, endowed with huge maws and everlasting life, do not devour the natural flesh and blood organisms which create and constitute the state. To strike out what has been inserted in the statute books, for special and sinister purposes, and to put our legislation on a level with our achievements in machinery, in agriculture, and in commerce, would require a continuous session of several years. To cut in half the time of the session of our legislature, as a cure for bad legislation, is not only to prove ourselves ignorant of the cure

for our evils, but ignores the causes of the evils. Insufficient time for investigation, inadequate machinery for investigation, as preliminary to legislation, absence of notice to parties to be affected by proposed legislation, hurry, want of method and of publicity, absence of deliberation, are among the main causes of bad legislation. Now, how will this be cured by biennial legislatures, with the consequent doubling, at the least, of the pressure upon the legislature when it does meet? Reducing the time for deliberation increases the hurry, and necessarily dispenses with the little method that is still observable. It is true that the dread of the meeting of the law-makers comes upon the community only biennially, instead of annually. Large interests would be adversely affected but once in two years, instead of every year; but if that reason should govern in the introduction of this proposed reform, it does not go far enough; why not put off the dreadful visitation for a decade or a generation?

This proposed remedy is contrary to the tendencies of modern civilization; it is the abdication of a function, not its specialization and development; it is the merest refuge of imbecility, a confession that on this subject we are bankrupted in thought; that instead of being able to turn out better laws by selecting better legislators and improving their methods, our invention offers no other cure than to close the gates of our legislative mills every other year, in the vain hope that in the alternate year they may produce better wares. In the domain of social affairs, false measures work the same kind of mischief to the body politic, that quack medicines do to the physical body; the symptoms are treated, and the outward manifestations of the internal disease allayed; the disappearance of the symptoms of the disease creates a fatal confidence that the disease itself has ceased its ravages, and the mistake is only seen when the patient is too far gone for genuine therapeutic treatment. There is no

other remedy for the evils of our legislation and the harm they call forth than first to recall our prohibition of special legislation and to abandon the idea of biennial legislatures, as twin progenies of Dr. Sangrado's brain, and then earnestly to set to work to secure the adoption of a series of constitutional amendments which shall prescribe,—

1st. A division of local and special laws from general laws, treating the former as private petitions to be tried before enactment, and attach to the preservation and amendment of the latter the safeguard of party responsibility.

2d. The carrying out of this latter purpose, either by instituting cabinet or ministerial responsibility, or raising a permanent board of revision as a bar to further mischievous innovations to subserve private interests.

3d. That all bills which create or extend corporate powers, which change municipal or local laws other than by general law, which grant any special privilege, or which involve the exercise of the right of eminent domain, shall be filed in a proper public office sixty days before the beginning of the session, and that in all cases notice by publication must be given of such filing, and personal notice before the beginning of the session to all property owners whose fee or easements are proposed to be taken in *invitum*.

4th. That the petitioners in every case of an improvement, the creation of which involves legislative sanction, shall deposit a percentage of the amount of the cost as evidence of good faith, and to prevent speculation in public franchises.

5th. The establishment of a schedule of legislative fees to be paid to the comptroller, and to be subject to the joint drafts of the presiding officers of the legislative bodies to pay the expenses for the consideration and trial of private and local bills, and to that end the committees are authorized to employ experts and counsel as aids to inform them. This

sum should be sufficiently large to deter frivolous applications to the legislature, and to enable the legislature to secure ability of the highest order.

6th. The enactment of a simple code of legislative procedure for private and local bills to secure a fair trial, examination of witnesses, and argument of counsel before these committees, and to allow committees to call in as associates, to sit with them, but not to vote on final determination, experts who are not members of the legislature.

7th. The creation of a legislative bill of costs to indemnify successful and punish unsuccessful litigants before legislative committees.

8th. An absolute prohibition of all local and private legislation (except under circumstances of great public exigency, which can easily be provided for) which has not passed through the ordeal of this improved method of legislative procedure.

9th. A complete remodelling of the organization of committees, and the rules of the legislature to conform them to the new system of orderly trial of bills instead of the prevailing irresponsible and haphazard method.

Many of these suggestions may be embodied in a law instead of being incorporated in the constitution.

Enough should go into the constitution to make the change imperative. It is not to be expected that all the smaller details of a statute should be imbedded in the constitution; but experience has taught us, however, that constitutional directions to the legislature may be of too general and vague a character to enforce obedience. Since 1848 the constitution of the State of New York contained a provision that the legislature shall restrict the powers of municipalities to create indebtedness, but until recently it has failed to do so. A New York constitutional amendment of 1874 required the legislature to pass a general street railway bill. It failed

to do so from 1875 until 1884; and many other instances may be cited to the same effect.

When there shall have been introduced into our law-making bodies something like scientific procedure a great step forward will have been made to abolish that noxious and corrupting element known as the lobby.

When every measure involving private interests must stand a fair trial, the same change will probably take place in the United States that has already taken place in that country whence we derive our laws. The adoption of the parliamentary standing orders substituted for the lobby agent the parliamentary bar, as honorable a body of men in our profession as is to be found at the common law bar or in the equity courts. Preferment to the bench is not so frequent an honor to the silk gowns of St. Stephens, as to those of our brethren of the Supreme Court of Judicature, but the emoluments of the parliamentary bar are somewhat higher. Much, of course, remains to be done by the destruction of party machinery and liberating constituencies so as to raise the personnel of the law makers. I do not share the popular conviction of the widespread corruption of legislatures; it is the inability of the average legislator to know the truth, which gives to the corrupt few their great opportunity. The great remedies for the evils of our institutions are publicity, and investigation of a judicial nature. The test of merit, to my own mind, of the recommendations that I have made this evening, lies in the fact that they secure both these elements. And as the first creative act was the divine ordinance "let there be light," so through all time, more and more light is the first condition of progress in every department of human activity.

OBITUARIES.

ILLINOIS.

ISAAC NEWTON ARNOLD.

Isaac N. Arnold, for many years one of the most prominent and distinguished members of the Illinois bar, ex-Representative in Congress from the state of Illinois, and President of the Chicago Historical Society, died at his residence in Chicago, on the 24th day of April, 1884, aged seventy years.

Mr. Arnold was born in the town of Hartwick, Otsego County, New York. His father was a country physician, who, while conscientiously attending to the demands of his profession, added something to his limited income by cultivating a small farm. Thrown upon his own resources at an early age, by diligent study under adverse circumstances, young Arnold prepared himself for the study of law, at Coopers-town, in the office of the Hon. E. B. Morehouse. Having been admitted to the bar, he took up his residence in Chicago in 1836, then an unpromising and forbidding village of a few thousand inhabitants. His course from that time was one of honorable and well-earned success, and at the time of his death, no citizen of Chicago was more widely known, and more highly honored, respected, and esteemed. Entering with great zeal on the practice of law, he soon took a high rank in his profession, which he maintained as long as he remained at the bar.

Interested always in questions of public interest, Mr. Arnold often stepped outside the limits of his profession to make himself heard and his influence felt. When the question of the repudiation of the debt of the state of Illinois arose, Mr. Arnold, as was natural for a man of his stamp, revolted against the proposition, and gave the influence of his high character and great ability to sustain the public faith.

In the session of the Illinois Legislature in 1842-3, of which Mr. Arnold was a member, he rendered a great and inestimable service to the state, in initiating and carrying through what was known as the *Canal Bill*, which laid the foundation of the state credit, and made Illinois what it is to-day. On all questions of good faith and public morality, Mr. Arnold was always on the right side. He was a man of great independence of character, thought, and action. He never pandered to low tastes nor popular prejudices, and there was not the slightest tinge of the demagogue in all his composition.

But it was in political life, and as a member of Congress during four years of the war, that Mr. Arnold won his greatest honors. He was elected a member of the 37th Congress from the Chicago district, on the same day that Mr. Lincoln was elected President, in November, 1860.

Mr. Arnold and Mr. Lincoln had known each other long and well. They had been associated as lawyers in the trial of causes, and had been opposite counsel in important litigation. Their long association at the bar had made them to know one another well, and engendered mutual respect and esteem. Mr. Lincoln hailed the election of Mr. Arnold with pleasure, for in him he saw the faithful friend, the wise counsellor, and the loyal and patriotic citizen. And hence it was that he gave him his fullest confidence, and extended to him so many evidences of the high regard in which he held him.

Mr. Arnold took his seat in Congress at the extra session on the 4th of July, 1861. Trained in the acts of legislation by his service in the Illinois Legislature, he participated at once in the business of the House, and soon took rank, not only as an able debater, but as a sound and practical legislator. Able, vigilant, and conscientious, he was always at his post of duty in the House and in the committee room. He never dazzled by brilliant speeches got up for popular applause and cheap glory, but devoted himself to the serious subjects of legislation with assiduity and intelligence. The Congressional Globe, during his term of service, is an enduring monument to his great and useful labors.

From his earliest manhood he always entertained the strongest feelings of hostility to human slavery. He voted for the abolition of slavery in the District of Columbia, and in March, 1862, he introduced a bill, sweeping in its provisions, to prohibit slavery in every place in the United States subject to national jurisdiction. The bill became a law.

Mr. Arnold's name will ever be honorably associated with a measure of legislation of more importance than any which ever adorned the statute book of any nation. On the 15th day of February, 1864, he introduced into the House of Representatives a joint resolution, which was passed, declaring that the Constitution of the United States should be so amended as to "ABOLISH SLAVERY IN THE UNITED STATES." This was the first step ever taken by Congress in favor of the abolition and prevention of slavery in the country.

It is impossible in the limits of this paper to do full justice to Mr. Arnold's congressional record. He went to Congress to serve his country in its hour of peril and not for objects of an unworthy ambition. He was thoroughly incorruptible, and such was his high character, unquestioned integrity, and elevated code of morals, that no man ever

dared approach him with an improper suggestion in respect of his official action.

Mr. Arnold's congressional career ended with the 38th Congress, March 3, 1865. During his whole term of service, not only from a sense of duty, but from his high personal regard for the President, he gave the administration of Mr. Lincoln a loyal, able, and efficient support. After the assassination of Mr. Lincoln, being already engaged in writing a "*History of Abraham Lincoln and the Overthrow of Slavery in the United States*," Mr. Arnold accepted from President Johnson the appointment of Auditor of the Treasury for the Post Office Department, as a residence in Washington afforded him more ready access to material necessary for him to have in preparing his work.

Resigning his position at Washington, Mr. Arnold resumed his law practice in Chicago in 1872, but at the end of two or three years was compelled to abandon it by reason of failing health. It was then he found leisure to devote himself to favorite literary pursuits. In 1872, he published his "*History of Abraham Lincoln and the Overthrow of Slavery*," and in 1880, his "*Life of Benedict Arnold*," and at the time of his death had just completed "*The Life of Abraham Lincoln*," to which he had devoted the last years of his life. This work, now going through the press, will undoubtedly be regarded for all time as the standard life of Mr. Lincoln.

Of an active mind, taking an interest in all passing events, Mr. Arnold always found some subject to occupy his attention and engage his pen.

Besides the books he published, he was the author of a great number of sketches, papers, biographies, and reviews, most of which have been published; and all of them are interesting and valuable in a personal and historical point of view.

Mr. Arnold was one of the founders of the "Chicago Historical Society," and for seven years and a half, and up to the time of his death, its President.

He was the soul of probity and honor. Neither the purity of his private life, nor the integrity of his public conduct, was ever challenged, but in every position of life he stood before the world as an honest man, a cultivated gentleman, a good citizen, and a public servant without reproach.

MASSACHUSETTS.

GEORGE MARSTON.

Born at Barnstable, Massachusetts, the central village of Cape Cod, October 15, 1821, George Marston was fitted for his profession by his uncle and by his studies at the Harvard Law School.

Admitted to the bar at Barnstable, in September term, 1845, he continued in active practice until his death, August 14, 1883, residing at Barnstable until February, 1869, when he removed to New Bedford. He held successively the offices of Register of Probate (March, 1853, to December, 1854), Judge of Probate (December, 1854, to July, 1858), District Attorney for the Southern District (January, 1860, to December, 1878), Attorney General of Massachusetts (January, 1879, to January, 1883). Thus, for almost a quarter of a century, he held the position of public prosecutor in an intelligent and prosperous community. His record therein is his noblest monument, confirming alike his integrity, his ability, and his humanity.

The following extract is from the remarks of Thomas M. Stetson, of New Bedford, at the meeting of the Bar of Bristol County, held on September 7, 1883, upon the occasion of Mr. Marston's death :

“Twenty years ago he came from a practice in Barnstable County, presumably not large, but the best the Cape, with its limited population and wealth, could furnish, and since that time has been completely identified with us; and we are met to-day, not to discuss one who, by official station or action elsewhere, has become prominent, but to mourn one who has borne himself so well, right here at home. During this time it has been my fortune, in a large part of my court practice, to be in opposition to him. I had the fullest opportunity to see his rough side, if he had any, and I cannot recall, in that long period, one unkind word from him, or even any coolness in that friendship and harmony so essential to the satisfactory practice of our profession. It was not that he ever yielded his client's rights in substance; he was not employed nor expected to do that, and he never did; but he never wasted time in non-essentials. He was always ready to mitigate the trouble and expense of litigation by reasonable agreements, to waive useless skirmishing upon minor points, as he was to fight stoutly out to an end the main and real issue of a cause. I particularly appreciated the facility of negotiation with him in cases where uncertainties made both parties reluctant at the incisiveness of a verdict or a finding. Our method was generally a valuation of chances. He never obstructed it by any childish game of bluff, deemed so important by tyros. He never gazed so exclusively upon his side of the shield as not to know pretty well what the other side was worth too. His early training in law was excellent for the time and place. He saw a sound, practical management of affairs, which made the country house

of his uncle a resort from all over the Cape, so that carriages stood there by the fence as if some local convention were in progress. To be sure, it may not have been the higher branches of equity and law that were there administered in the quasi-authoritative manner of Judge Nymphas Marston, but it was practical law, and that science of rural affairs which helped the 'plain people.' In his later years, I do not think he devoted himself much to the study of law, as a science, but he was always sufficient for his own occasions and needs. The life of a bookworm or Pandect-maker could have no charms for him. His piece was properly loaded, and he certainly always fired it off in the right direction. His tendency, fitness, and long life training were toward what Judge Colt called the loftiest effort of professional skill—the conduct of a jury trial; and in this, not only in the closing argument, but in every detail of the proofs, Mr. Marston was very skilful indeed. His cross-examinations were never the aimless multiplication of questions, but had always a purpose, and were continued only so long as reasonable hope existed of attaining it. His arguments were never too long or too short, and were models for common pleas cases, always with pith and point, and when occasion required, and especially in the years before his physical strength diminished, rising to true forensic eloquence. I recall his arguments in the Tuckerman indictment case, the Barker will case, the Granite Mill case, as masterpieces. I think his strongest point as an advocate was what I would call his humanness (to avoid a word which has drifted from its primal meaning). He had an instinctive appreciation of the ways, notions, thoughts, and motives of common folks—of Cape Cod folks, of Old Colony folks—a natural relation to and identification with the ways of the mass of men. He knew human nature very well; not, perhaps, in its exceptional and more

exalted forms, but as it is in common New England people. He knew the dialects of the sea-coast and the sea, of the Cape towns, the mills, the farms, the fishermen. He could read a witness with unfailing precision. He knew the people because he was of them, and never dreamed of soaring above them or scorning them. I think he was absolutely without pride, self-conceit, or vanity. His kindly nature showed itself in intercourse with individuals; his generosity and charity were unfailing; his ready good-nature has gladdened many a young practitioner, and many an old one too, though he could come down in strong Saxon and manly indignation upon anything he deemed improper or irregular. He had his enemies, of course; what salient, strong Cape Codder has not? and I do not believe he ever concealed or disguised his whims or his opinions, political or otherwise, or wrong or right, for the sake of popularity. In short, he was a kindly man of the people, and lived his sixty-two years with all the powers and limitations that such a nature gave him. To know human nature was his nature. In it, to him, nothing too common was, or mean, for interest. He believed with Wordsworth :

“He that despiseth any living thing,
Hath faculties that he has never used;
Thought with him is in its infancy.”

“He even over-estimated his profession. From his early youth he had aimed at its mastery, and valued it more highly than any official honors given by or asked from the public. His devotion to it was an over-devotion. He had no vacation ideals. The *jucunda oblivia sollicitæ vitæ* never sang siren songs to his ear—never with signs, gracious as rainbows, enticed him away from unremitting professional labor. This last had its constant enjoyment for him,

but its fatal peril too. The Massachusetts bar and bench have had admonitions enough that wearied nature must have repose. He never sought it, and so we have lost one of our brightest and best.

But I have spoken too long out of a full heart. Our unresting friend is at rest now. His passing bell has ceased to toll. We shall long miss the familiar figure which towered so high physically and mentally in the court rooms of Southern and Eastern Massachusetts. The bright radiance of a celestial morning has brought him that rest he never found here. He is listening to the clear bells upon the shining shore, while we await in our turns the lapse of time and the inevitable hour."

GEORGE STEVENS.

George Stevens was born at Stoddard, New Hampshire, on October 23, 1824; graduated at Dartmouth College in 1849; taught in academies in Pittsfield, Gilmanton, and Mt. Vernon, New Hampshire; studied law in the city of Lowell, Massachusetts, in the office of D. S. & William A. Richardson (the latter now a judge of the United States Court of Claims); was admitted to the bar in the Court of Common Pleas, September 26, 1854, and practiced law in Lowell to the time of his death, which occurred June 5, 1884. He was clerk and later an associate justice of the Police Court of the city, which position he resigned in 1874; was Representative to the General Council from Lowell in 1858; was appointed October 15, 1874, by the Governor, District Attorney of the Northern District, being Middlesex County, to fill an unexpired term; was elected to the same office in November, 1874, and again in November, 1877, and resigned in 1879.

The last time Mr. Stevens attended court was on the first day of the April term, 1884, of the Supreme Judicial Court.

At a meeting of the Lowell Bar Association, when resolutions to his memory were presented to the Police Court, it was said of him: "At the opening of the April term of the Supreme Judicial Court in this city, he was weary and tired; he was sick, and seemed to need rest for recovery. He remarked that he could not write during this term, and that his business in court must be postponed. He was not strong, but it hardly appeared then that a *postponement then* meant *forever*. His condition seemed to remind one, of those wearisome periods that now and then come upon every lawyer who has a large practice and conscientiously struggles with its weight and care and responsibility.

The profession of the law is a laborious and tiresome one. Many a young man destined to a long and honorable career of professional practice, would doubtless undertake the burden with great reluctance if he could comprehend and weigh it before he entered upon the service; and to look back upon such a service, you see a record, let it be the best that can be made, which tells of wearisome controversies and exhaustive labor, and for which *rest* is a most welcome reward.

Mr. Stevens was a good lawyer, and studied his books and his business well. He always prepared himself for his work before the courts and juries, and presented his cases with great uniformity of preparation and ability, and he met with his just share of success. He was a pleasant companion, with or against whom, in the trial of causes, it was always agreeable to be engaged, for he was upright and honorable and fair in his ways, and he liked men around him whom he could respect for their honesty of purpose and good intentions.

In the midst of an extensive professional practice, surrounded by a pleasant and affectionate family, respected by his professional brethren as well as by his fellow-citizens, he laid down the large and important trusts committed to his care, and passed on to the new world where the weary are at rest.

Judge Rockwell, of the Supreme Court, at the last September term in Lowell, after the presentation of resolutions in memory of Mr. Stevens, and addresses by members of the bar, in a feeling tribute, remarked that he first became acquainted with Mr. Stevens in 1858. At that time Judge Rockwell was Speaker of the House of Representatives of Massachusetts, and Mr. Stevens was a member from Lowell. Among other things, Judge Rockwell said: "It became my opinion that if he continued in political life he would become one of the most valuable legislators in the state and perhaps in the country. But I was not surprised to learn that his course of life did not take that direction. It took, perhaps, a better one, and he devoted his energies to the practice of the noble profession of the law. And for the last twenty-five years, more or less, I have seen him in this and other court houses, and in the office of District Attorney, performing his arduous duties in a most acceptable and able manner. I am glad he set such an example for the young men of the profession to follow."

Mr. Stevens was married to Elizabeth R. Kimball, of Littleton, Massachusetts, September 19, 1850. His wife, a son, who was his law partner, and two daughters, survive him.

DWIGHT FOSTER.

Dwight Foster died at his residence in Boston, April 19, 1883, in the fifty-fifth year of his age. He was born in Worcester, Massachusetts, where the early years of his professional life were passed. His first New England ancestor, Reginald Foster, came from Exeter, in England, in 1638, and from that time to the present the family, in each succeeding generation, has been widely known and honored throughout the Commonwealth. Jedediah Foster, who was graduated at Harvard in 1744, was an earnest and steadfast advocate of the rights of the people during the Revolutionary struggle. He was rejected by Governor Gage as a member of his council, became subsequently a judge of the Superior Court of Judicature of Massachusetts, and was a leading member of the convention which drew up the Constitution of the state. His son, Dwight Foster, a graduate of Brown University in 1774, was a representative in several of the early congresses, and a United States senator from Massachusetts from 1800 till 1803. He was a lawyer by profession, but his public duties engrossed the larger portion of his active life. His only son, Alfred Dwight Foster, after graduating at Harvard in 1819, was admitted to the bar, and subsequently removed from Brookfield, where his family had long been established, to the city of Worcester. He held many offices of trust, and his active interest in public and private charities gave him a distinguished reputation throughout the state. He was born with the century, and died greatly lamented in 1852.

His son, Dwight Foster, the subject of this sketch, was graduated at Yale College in 1848 as the valedictorian of his class, and after a course of study at the Harvard Law School, was admitted to the bar in 1850. He commenced

the practice of his profession in Worcester, and was soon recognized as one of the leaders of the bar in Central Massachusetts. In 1861, at the outbreak of the Rebellion, he was chosen attorney-general of the Commonwealth, and he retained the office, by annual election, during the four eventful years of the Civil War. His relations with John A. Andrew, the great "war governor," were very constant and cordial, and the correspondence which passed between them when Mr. Foster declined a renomination in 1864, shows a very high appreciation, on the part of the governor, of the wisdom and ability of his constitutional adviser.

In 1864 he removed to Boston, where his private practice had already assumed such importance, that Worcester had ceased to be a convenient place of residence. In 1866, while in his thirty-eighth year, he was appointed one of the justices of the Supreme Judicial Court. For this position the judicial habit of his mind eminently fitted him, and his retirement from the bench, after a brief term of three years, was greatly deplored by the profession. He resumed practice in Boston in 1869, and from that time till his death he stood easily among the foremost at the Suffolk bar. He gave much time during his later years to questions of law relating to life insurance, and there are very few of the important life insurance companies doing business in the United States which have not had occasion to retain his services. As an equity lawyer he had few equals at the bar, and his lectures on Equity Jurisprudence before the Boston Law School will long be remembered by the younger members of the profession who had the good fortune to hear them.

Judge Foster was a man of great courage, and possessed of a keen sense of public and private duty. He was never influenced by popular prejudice or clamor, and was always

ready to step to the front as a volunteer, and undertake the ungrateful task of opposing any measure which might appeal to the public sympathy, but which he believed to be wrong in principle.

The case of *Lowell vs. Boston*, 111 Mass., 454, affords a very good illustration of this trait in his character. The great fire in Boston in 1872 destroyed buildings and property to the amount of \$60,000,000, and deeply stirred the sympathies of the whole country. The Legislature of Massachusetts was hastily convened in special session, and an act was passed authorizing the city of Boston to issue bonds to the amount of \$20,000,000, and lend the proceeds on mortgage to the owners of land, the buildings upon which had been destroyed. Judge Foster was of opinion that such special legislation was extremely dangerous in its tendency, and exceeded the constitutional power of the Legislature; but public sentiment was strongly interested in its favor, and it was with great difficulty that ten taxpayers of the city could be found who were willing to join with him in an application for an injunction against the issue of the proposed bonds. Judge Foster offered his free services as counsel, and presented the case on behalf of the petitioners with great ability. The city was represented by Benjamin R. Curtis, one of the ablest jurists the country has produced, and by J. G. Abbott, another leader of the Suffolk bar. Both expressed great confidence in the positions assumed by them at the hearing, but the views of Judge Foster prevailed with the court, and the statute was declared unconstitutional. This decision was a great disappointment to the community, and led at the time to a good deal of hostile criticism; but sober second thought has long since recognized the wisdom as well as the courage of Judge Foster's course, and has approved the decision of the court.

Mr. Foster married in 1850, Henrietta, the second daughter of Hon. Roger Sherman Baldwin, of Connecticut. He left four sons and three daughters. Three of his sons have chosen the law as their profession. One is in active practice in Boston, another in New York, and the third is now pursuing his studies in the Boston Law School.

MICHIGAN.

ROBERT P. TOMS.

Robert P. Toms, a member of the Detroit bar, and of the local council of the American Bar Association for this state, died on the 10th day of March, 1884, at his home in Detroit. Mr. Toms was born at Bloomfield, Oneida County, N. Y., October 20, 1820. Eleven years later he came to Michigan with his parents, and in 1849 began his professional career in this state. He was at one time associated with the late Hon. William A. Howard, one of the best known political leaders of the west, but for over twenty years before his death he conducted alone a large and lucrative practice.

While Mr. Toms rarely appeared in court, and could hardly be called an advocate in the legal sense of the term, interests of great magnitude were intrusted to his charge, and in the management of large estates, he not only enjoyed the unbounded confidence of his clients, but the esteem and good will of the entire community. His knowledge of business and of men of business, and his intimate acquaintance with the history and growth of the city of his residence,

were invaluable to his clients, who placed in his hands large sums of money, knowing they would be judiciously invested, and that he would account to them to the last dollar. He was an excellent lawyer, without being the leader he might have been, had his inclination led him toward the more active branch of the profession.

In social life he possessed a peculiar charm of manner, which drew about him hosts of friends. He was above all things genial in his intercourse with men, and even during the long and painful illness of six years which preceded his death, and when he knew that recovery was impossible, he preserved the attractive personal qualities which had endeared him to a large circle of acquaintances. He was always honest and sincere in his judgment of men and measures, and whether such judgments were right or wrong, favorable or unfavorable, one could always rely, in conversing with him, upon the sincerity of his opinion.

He was generous to those who were in want or trouble, and to those whom the accidents of business had placed in his charge, he was a kind and sympathetic protector and guardian. To younger members of the profession, he was specially helpful and considerate, and many of the leading members of the bench and bar of Detroit have reason to be grateful for his advice and assistance.

He was active and earnest in his political convictions, but never sought for or held a public office of importance, and never felt himself bound to support a candidate whom he deemed unworthy of the position he sought. So great was his aversion to office holding, that in the last years of his life, he declined a highly honorable appointment to the bench of his own state.

In writing this brief obituary we are not compelled to laud him for his good qualities to cover an unnamed vice, for of vices he had none. In his private life, he was

exemplary; in his habits, above reproach; in his nature, a well-spring of cheerfulness and good-fellowship, and an enterprising and liberal supporter of public improvements and charities. He left behind him no page which his friends would desire folded or concealed.

SOUTH CAROLINA.

JAMES BUTLER CAMPBELL.

James Butler Campbell was born at Oxford, in the state of Massachusetts. To it, his father, the Rev. John Campbell, had fled from the persecutions which were visited on the adherents of the cause of the Stuarts, to which the ties of blood, connecting him with the Duke of Argyle, had attached him. In Oxford, he was the first minister of the Presbyterian Church, and in that place he lived honored and respected, and his memory is there still gratefully and affectionately cherished.

Of all the advantages of education, and these were not in any manner limited, but embraced all that could be had, Mr. Campbell availed himself, prompted by the taste for letters, which was kept alive during his life, even amid the absorbing duties of large professional engagements. Of this, ample evidence is seen in the finished productions of his pen, than which none surpassed the force and beauty of the pure and finished style which had become an essential and inseparable accompaniment of all his productions.

In his very early manhood, James Butler Campbell came to the state of South Carolina, in which he was destined to pass his whole life, and with the most eventful periods of its history, to have his name honorably and conspicuously identified.

His inclination, with the early training he had received, made the profession of the law that to which he turned in the choice of a pursuit in life, and after the necessary preparation, which in those days had a meaning widely different from that it now has, he commenced in the city of Charleston the practice of his profession.

In the interval between the time when he came to this state and that in which he commenced his career, his taste, his temper, his ability, his generosity, had made for him warm and devoted friends. And no more touching tribute can be paid to his memory than to say, that the friends of his early life remained throughout his long and eventful career, in their regard and affection for him, as firm and constant as any one could desire. And under no circumstances could such a tribute be more touching. A fierce political convulsion shook the state to its centre. Society was convulsed with the excitement which stirred its every member. Young in years, Mr. Campbell sat in council with those of matured years and experience. And the closest personal relations united him with men whose more advanced age made such relations far from common. With the Hon. Joel R. Poinsett, these relations were continued throughout the whole of Mr. Poinsett's life; and his adoption of the friendship of one so young as Mr. Campbell then was, furnished in itself the evidence of the marked qualities which in his after life were so fully developed.

Nor less interesting was the relation he bore to one under whose direction he completed his preparation for the bar.

The learning and the eloquence of Hugh S. Legaré is still so well remembered, that he who was the pupil and friend of that distinguished man, in that position was well entitled to claim the recognition of the qualities of head and heart which only could be consistent with it.

In after years his relations with Mr. Webster, and in still

later years, the like relations with Mr. Stanbury, of Ohio, and others of equal public rank, sufficiently attest the position he held in his profession, as well as in matters of larger import.

At the close of the late Civil War, Mr. Campbell received from the state of South Carolina a recognition of its trust and of his merit, in the high distinction of the selection of him to represent it in the Senate of the United States. None doubted the great success which would have resulted to his state from his occupancy of that place. For while, in the progress of the war, he adhered with unshaken constancy to the cause of this his state, for it was his home, the birth place of his children, and in its soil reposed the remains of those he had loved in life, yet his relations without the state, and his affections within it, seemed happily to combine in him the qualities then needed in one who was to assist in the restoration to it of peace and good-will. But the passions of the war had not sufficiently subsided; he was not allowed to take the seat which would have been as worthily filled as it had been honorably assigned to him. With the exception of a short time in which, by common consent, he sat in the Senate of the state as the representative of the city of Charleston, he devoted himself to the duties of his profession, until compelled to retire by the increasing inroads of the sickness which terminated his life.

In the city of Washington, to which place professional engagements called him in the autumn of 1883, he surrendered the lease of his life. The quiet of his chamber was there exchanged for the noise of the forum; the tender affection of those near to him in blood and friendship, was to supply the place of those with whom he had wrestled in the arena of life, and in that peaceful vale of death, where no flattery can soothe, nor contest excite,

“After life’s fitful fever, he sleeps well.”

MEMORANDUM
OF
SUBJECTS REFERRED TO COMMITTEES.

Resolution of Skipwith Wilmer relating to the change in the form of discussions by the Association.

Referred to the Executive Committee. (See page [8.](#))

Resolution of R. T. Merrick relating to the passage of a bill by Congress, restoring the right of appeal to the Supreme Court in *habeas corpus* cases.

Referred to the Committee on Jurisprudence and Law Reform. (See page [43.](#))

Resolution of Austen G. Fox relating to the evils of the system of reporting decisions of the courts.

Referred to the Committee on Judicial Administration and Remedial Procedure. (See page [48.](#))

Paper read by Simon Sterne, on "Defective and Slipshod Legislation."

Referred to the Committee on Jurisprudence and Law Reform. (See page [52.](#))

Resolution of Simeon E. Baldwin relating to discriminations in favor of the territories and District of Columbia in appeals to the Supreme Court.

Referred to the Committee on Judicial Administration and Remedial Procedure. (See page [74.](#))

Resolution of [H. L. Lazarus](#) relating to legislation to secure uniformity in the obligations arising from indorsements in blank of commercial paper by third parties.

Referred to the Committee on Commercial Law. (See page [74.](#))

Resolution of David Dudley Field relating to the present delay and uncertainty in judicial administration.

Referred to a select committee of five. (See page [74.](#))

Resolution of A. J. Todd relating to legislation on patent, trade-mark, and copyright laws.

Referred to the Committee on Commercial Law. (See page [77.](#))

Resolution of W. [H. H.](#) Russell relating to the subject of registration of births, marriages, and deaths.

Referred to the Committee on International Law. (See page [78.](#))

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The Eighth Annual Meeting will be held at Saratoga
Springs, New York, on August 19th, 20th,
and 21st, 1885.

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